Developments in Russia’s Anti-Corruption: Efforts: Legal and Political Implications and the Concept of “Monitoring” Democracy as a Vehicle for Political System Change

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Should Australians Be Concerned about Developments in Russia?

- **Economic Relevance:**
  - Australia and Russia compete for export markets (coal, oil and gas, iron ore, gold, alumina, nickel & wheat).

- **National Security Concerns:**
  - Financial Crime;
  - Illegal Weapons Exports;
  - Cyber Crime;
  - other Transnational Crime.
Today’s Road Map

I. Introduction.

II. Conceptual Framework for the Russian Anti-Corruption Campaign.

III. Grouping to Understand Past Russian Presidential Transitions.

IV. The Interdependence between Organized Crime and Corrupt Officials.

V. Taking a Criminal or Civil Approach to Combating Corruption?

VI. ”Data” Limitations and Other Uncertainties.

VII. Possible Political Implications.
Introduction

- Why did Mr. Medvedev make combating corruption the centre-piece of his administration and why did Mr. Putin let him?
- Past anti-corruption campaigns (Andropov, Gorbachev, Yeltsin, Putin) & the significance of the Nazerbayev model.
- The inseparability of Russian criminal law and politics?
- Is it necessarily true that ‘the past is the present, it’s the future too’?
How is one to understand the significance of the Constitution of Russian Federation on political & economic power in the country?

- Elite competition (*oligarchs, regional fiefdom, siloviki, or something else*?*

- The English Indies Company as the ‘corporate model’?*

- The breach of the social contract: policy and political implications.

- Is cooption of the ‘intelligentsia’ and certain elites still and a viable strategy?
(i) state officials to declare income & net wealth (existing requirement);
(ii) state officials to report “ratting” on corrupt colleagues, i.e., inform on others’ unlawful conduct;
(iii) observe conflict of interests rules, and
(iv) tenders for state purchases to be held on a competitive basis (eliminate loopholes and give teeth to existing rules and procedures).
Medvedev’s ‘Candid’ Assessment

In July 2010, speaking before a gathering of federal and regional legislators in the Kremlin, Russian President Dmitrii Medvedev stated his anti-corruption campaign had not yielded “significant results.” The consequence of this failure is that a large segment of the Russian population has not enjoyed significant material benefits flowing from the country’s enormous wealth in natural resources. The failure of the majority of the people to share in the country’s reaches is to a great extent a product of corruption and mismanagement. Unfortunately, Mr. Medvedev’s audience contained many persons who helped to craft and implement his anti-corruption program, and thus a large number of them share in the responsibility for its failure to achieve its declaratory objectives.
The Inter-relationship Among Business, RCG and Government (usually regional/local)
Joint Responsibility/Circular Control

Кругая пргука [Krugoia poguka]
The rules of the game are nontransparent and frequently change because the existing legal framework does not function coherently.

Anybody [both Russian nationals as well as foreigners] can be framed and found guilty of some violation of the formal rules [i.e., the written law] because the economy operates in such a way that everyone is bound to disregard at least some of these rules.

Because of the pervasiveness of rule violation, punishment is bound to occur selectively on the basis of criteria developed outside the legal domain.

“Unwritten rules” compensate for defects in the rules of the game and form the basis for selective punishment.
Russian Criminal Code contains several articles that address the issue of complicity in a crime, which forms the basis of the law dealing with organized crime and corruption. Conceptually, persons who are complicit in the commission of a crime may be classified as: (i) a perpetrator (ispolnitel’), (ii) an organizer (organizator), (iii) an instigator (podstrekatel’), or (iv) an accessory (posobnik). A criminal group can be acting either pursuant to a scheme (zagovor) or without a formal plan.
According to US Gov't

- “Russian spies use senior mafia bosses to carry out criminal operations such as arms trafficking.”
- [Russian state bodies] operate as *de facto* protection racket for criminal networks.”
- “Rampant bribery acts like a parallel tax system for the personal enrichment of [Russian law enforcement authorities].”
- Prime Minister Putin [has apparently] been amassing illicit proceeds from his time in office,” much of which is kept abroad.
Russian Civil Forfeiture of Unexplained Wealth (Why Not?)

- Russian Civil Code Article 169—Invalidity of a Transaction Accomplished for a Purpose Contrary to the Foundations of Legal Order or Morality – transaction a nullity

- Russian Civil Code Article 170—Invalidity of a Sham or Feigned Transaction provides a transaction, effectuated without an intention to establish a relationship with legal consequences, taking into account the essence of the transaction, shall be deemed to be a nullity.

These provisions provides the substantive basis for private parties to bring claims against Russian enterprises and individuals (officials) in a non-Russian jurisdiction.
The New Legislative Approach

- **December 2010**: new legislation making Investigative Committee now is independent of the Russian General Procuracy.
- **February 2011**: losing party in a civil dispute an automatic *de novo* appeal.
- **February 2011**: larger fines for individuals convicted of paying bribes.
- **March 2011**: Law on the Police (the subject of a considerable debate).
Since the Russian State Controls the Media and . . . .

- Russian public option *per se*, does not play a role in the political process.
- Russia has a closed political system – hence, but for the collapse of the state, political succession must occur from within the elite.
- Regional political and economic elites are unhappy with the direction of the government – foreign governments prefer Medvedev to Putin – what are the implications?
Non-Traditional Media

- Originally, the Russian newspapers generally did not cover Wikileaks item. In December 2010, a small western-oriented readership, decided to publicize Russian-related Wikileaks stories.

- In recent months, Ruleaks.net (which is promoting itself as a Russian Wikileaks) and Rospil.info (for corporate whistleblowers) have appeared.

- What will be the impact politically & legally?