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## U.S.-Russian Mutual Legal Assistance Treaty: Is There a Way To Control Russian Organized Crime?

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# U.S.-Russian Mutual Legal Assistance Treaty: Is There a Way To Control Russian Organized Crime?

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## **Abstract**

This Comment analyzes U.S. and Russian bilateral cooperation in fighting organized crime and the difficulties associated with this fight. Part I of this Comment presents the historical development of Russian organized crime, its domestic effects, and its internationalization, particularly in the United States. Part I also highlights the Russian government's legislative attempts to combat organized crime. Finally, Part I examines examples of international bilateral cooperation, such as that between Israel and the United States, which can be emulated by the Russian and U.S. authorities. Part II analyzes the existing Mutual Legal Assistance Agreement ("MLAA") between the United States and the Russian Federation, and examines existing as well as potential methods of cooperation between the two governments in combating organized crime. Part II also analyzes the problems that thwart increased cooperation. Finally, Part III of this Comment argues that ratifying and putting into force a mutual legal assistance treaty ("MLAT") between Russia and the United States will significantly affect the spread of Russian organized crime in the Russian Federation, the United States, and globally.

U.S.-RUSSIAN MUTUAL LEGAL ASSISTANCE TREATY:  
IS THERE A WAY TO CONTROL  
RUSSIAN ORGANIZED CRIME?

*Eugene Solomonov\**

Two contract killers patiently wait at a doomed businessman's doorstep. "Hey, Kolya, the man is late," one finally says, clutching his pistol. One hour later, the other says, "Hey Vanya, I'm getting worried. What if something bad happened to him?"<sup>1</sup>

INTRODUCTION

Vyacheslav Ivankov, nicknamed *Yaponchik*,<sup>2</sup> was born in the Russian city of Vladivostok.<sup>3</sup> He got his start in organized crime in the 1960s in a criminal group led by the famous criminal nicknamed *Mongol*, and quickly became notorious for extorting money from underground Soviet<sup>4</sup> millionaires, such as shopkeepers, government bribe-takers, and factory directors.<sup>5</sup> In the

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\* J.D. Candidate, 2000, Fordham University School of Law. I thank my family and friends for their support and encouragement, and editors and staff of this journal for helping me to write this Comment. I also acknowledge Alison Wong and the law firm of Coudert Brothers for helping me to locate materials used in this Comment. I dedicate this Comment to the memory of my grandparents, Benyumin and Lenina Modelevskiy. Unless indicated otherwise, all Russian translations herein provided by the author.

1. Sergei Shargorodsky, *Year After Reporter's Death, Major Slayings Remain Unsolved in Russia*, ASSOCIATED PRESS, Oct. 17, 1995, available in 1995 WL 4410487. Contract killings in Russia happen so often that they no longer surprise anybody or attract much attention. *Id.* Few of these crimes are ever solved. *Id.*

2. See Office of International Criminal Justice, Crime & Justice Europe, *Top Vor Nabbed by FBI* (visited Sept. 9, 1999) <<http://www.acsp.uic.edu/OICJ/pubs/cje/050410.htm>> (on file with the *Fordham International Law Journal*) (stating that Ivankov reached top of criminal hierarchy through merciless methods of extortion and manipulation of legal system in former Soviet Union). *Yaponchik* in Russian means the Little Japanese. *Id.* It is unclear how Ivankov received this nickname. *Id.* Some believe that it was due to the Asian cast to Ivankov's eyes, while others think that it was derived from the name of another criminal nicknamed *Yaponchik*, who engaged in criminal activities in the 1920s. *Id.*

3. *Id.*

4. See WEBSTER'S THIRD INTERNATIONAL LAW DICTIONARY 2179 (1986) (defining Soviet as "of or relating to, or associated with the U.S.S.R. or its inhabitants"). Russian is defined as "of or relating to Russia, its inhabitants, or their language." *Id.* at 1991.

5. Office of International Criminal Justice, *supra* note 2. See Candace Sutton, *More Evil Than the Mafia*, SUN HERALD, June 1, 1997, at 56 (stating that young Ivankov served as enforcer for Mongol); see also Lee Hockstader, *Russia's Criminal Condition; Gangsters*

mid-1970s, the Soviet authorities arrested, tried, and sentenced Ivankov to five years in prison,<sup>6</sup> where he was honored to become a *vor v zakone*,<sup>7</sup> the highest level of the criminal hierarchy in the former Soviet Union.<sup>8</sup> Later, Ivankov organized his own criminal group.<sup>9</sup> In 1981, the authorities again tried Ivankov and sentenced him to fourteen years in prison,<sup>10</sup> but released him in 1991 after members of the Parliament and the Supreme Court of the Russian Federation petitioned for his freedom.<sup>11</sup>

Shortly after Soviet authorities released Ivankov from prison, a consortium of Russian organized crime leaders chose Ivankov to go to the United States and establish criminal enterprises there.<sup>12</sup> He admitted to one New York newspaper that he was authorized to bring order to U.S. immigrant circles.<sup>13</sup> Ac-

*Spreading Web from Moscow to the West*, WASH. POST, Feb. 26, 1995, at A1 (explaining how Ivankov's victims, fearing for their lives, were reluctant to contact police authorities).

6. Office of International Criminal Justice, *supra* note 2.

7. See Joseph D. Serio & Vyacheslav Stepanovich Razinkin, *Thieves Professing the Code: The Traditional Role of Vory v Zakone in Russia's Criminal World and Adoptions to a New Social Reality*, Crime and Justice International, Crime & Justice Europe (visited Mar. 17, 1999) <<http://www.acsp.uic.edu/OICJ/pubs/cje/050405.htm>> (on file with the *Fordham International Law Journal*) (noting that *vor v zakone*, thief professing code, is position of great authority in Russian criminal world). A *Vor v zakone's* behavior is guided by the special criminal code (*vorovskoy zakon*). *Id.* His authority includes the organization of criminal enterprise and its activity, arbitration and settlement of disputes between different groups, and sanctioning of code violators. *Id.* According to official sources, there are around 400 *vory v zakone* in Russia and 700 in the former Soviet Union. *Id.*; see also Hockstader, *supra* note 5, at A1 (reporting how *vory v zakone* were "antithesis of the Soviet system"). *Vorovskoy zakon* prevented thieves from working, having spouses and children, or serving in the army. Hockstader, *supra*.

8. See Serio & Razinkin, *supra* note 7 (noting that *vor v zakone* is more than merely leader of criminal organization).

9. See Office of International Criminal Justice, *supra* note 2 (noting that Ivankov's group consisted primarily of athletes); see also Sutton, *supra* note 5, at 56 (noting that Ivankov was popular due to his anticommunist stance).

10. Office of International Criminal Justice, *supra* note 2; see Hockstader, *supra* note 5, at A1 (stating that Ivankov's prison sentence was close to maximum term allowed by Soviet law). Ivankov turned himself in after he was involved in a fierce shootout with undercover police in 1980 in Moscow. *Id.*

11. See Hockstader, *supra* note 5, at A1 (reporting that Ivankov's prison record was terrible). Svyatoslav Fyodorov, member of the Russian Parliament, and Anatoly Merkushev, the deputy chairman of Russia's Supreme Court, both played a role in Ivankov's early release from prison. *Id.*; see also Sutton, *supra* note 5, at 56 (noting that intellectuals and prominent Russian persons signed petition to support Ivankov's release from prison).

12. Douglas Farah, *Russian Mob, Drug Cartels Joining Forces; Money-Laundering, Arms Sales Spreading Across Caribbean*, WASH. POST, Sept. 29, 1997, at A1.

13. Office of International Criminal Justice, *supra* note 2.

ording to federal authorities, Ivankov was also responsible for extending the reach of Russian organized crime to Miami.<sup>14</sup>

In a mid-1993 interview with CJ Europe,<sup>15</sup> Jim Moody, head of the Federal Bureau of Investigation's<sup>16</sup> ("FBI") Organized Crime Control Department, predicted that the FBI was going to eventually arrest Ivankov, even if it was going to take some time.<sup>17</sup> Moody's prediction eventually turned out to be correct, as on June 8, 1995, FBI agents arrested Ivankov in New York.<sup>18</sup> U.S. authorities charged Ivankov with masterminding a US\$3.5 million extortion racket against Summit International, an investment firm owned by two Russian businessmen.<sup>19</sup> Ivankov was charged with violent intimidation directed at the owners of the firm.<sup>20</sup> The businessmen were approached in 1994, told that

14. See Farah, *supra* note 12, at A1 (stating that in Miami, Ivankov frequently visited nightclub called Porky, which is owned by another Russian mobster, Ludwig Fainberg). In February 1997, Ludwig Fainberg was arrested for planning the sale of at least two Soviet military helicopters to the Cali Colombian drug cartel. *Id.* They were also allegedly negotiating the sale of a diesel patrol submarine for moving cocaine from Colombia to the United States. *Id.*

15. See Office of International Criminal Justice (visited Aug. 17, 1999) <<http://www.acsp.uic.edu/OICJ/PUBS/cje0505.htm>> (on file with the *Fordham International Law Journal*) (defining purpose and activities of CJ Europe). CJ Europe is a journal that is published six times a year by the European Division of the Office of International Criminal Justice, in affiliation with the Office of International Criminal Justice at the University of Illinois at Chicago. *Id.*

16. See Federal Bureau of Investigation (visited Aug. 15, 1999) <<http://www.fbi.gov>> (on file with the *Fordham International Law Journal*) (describing agency's structure, activities, and major investigations). The Federal Bureau of Investigation ("FBI"), founded in 1908, is the principal investigative agency of the U.S. Department of Justice. *Id.* It has the authority and responsibility to investigate specific crimes assigned to it. *Id.* The FBI is also authorized to provide other law enforcement agencies with cooperative services, such as fingerprint identification, laboratory examinations, and police training. *Id.* As of October 1998, the FBI had approximately 11,400 Special Agents and 16,400 Professional Support Personnel, and had a Fiscal Year 1999 budget of US\$3.5 billion. *Id.* The current director of the FBI is Louis J. Freeh. *Id.*

17. Office of International Criminal Justice, *supra* note 2.

18. See Stephen Handelman, *Russian Crime Boss Arrested in Brooklyn; FBI Calls Case Key Blow Against Gangster Web*, TORONTO STAR, June 9, 1995, at A2 (reporting that five of Ivankov's associates were charged in same case).

19. See Laurence Peter, *FBI Chief Plays Down Threat from Russian Criminals in US*, AGENCE FRANCE-PRESSE, Nov. 19, 1997, available in 1997 WL 13437512 (reporting that at that time FBI believed Ivankov's capture to be most important arrest in war against Russian organized crime in United States).

20. Richard Pyle, *Russian Mob Boss Sentenced; Gets 9 3/4 Years for Extortion Plot*, ASSOCIATED PRESS, Jan. 30, 1997, at A11. Intimidation used against Alexander Volkov and Vladimir Voloshin, the owners of Summit International, included the kidnapping and slaying of Voloshin's father in Moscow in 1995. *Id.*

they could avoid complications by paying sums ranging from US\$2.7 million to US\$5 million for protection, and, under duress, agreed to pay US\$3.5 million.<sup>21</sup> U.S. and Russian law enforcement officials worked long and hard together to build a strong case against the powerful Russian criminal leader.<sup>22</sup> Through cooperation, they were able to achieve something that was unrealistic just a very short time ago.<sup>23</sup>

This Comment analyzes U.S. and Russian bilateral cooperation in fighting organized crime and the difficulties associated with this fight. Part I of this Comment presents the historical development of Russian organized crime, its domestic effects, and its internationalization, particularly in the United States. Part I also highlights the Russian government's legislative attempts to combat organized crime. Finally, Part I examines examples of international bilateral cooperation, such as that between Israel and the United States, which can be emulated by the Russian and U.S. authorities. Part II analyzes the existing Mutual Legal Assistance Agreement<sup>24</sup> ("MLAA") between the United States and the Russian Federation, and examines existing as well as potential methods of cooperation between the two governments in combating organized crime. Part II also analyzes the problems that thwart increased cooperation. Finally, Part III of this Comment argues that ratifying and putting into force a

21. *See id.* (noting that agreement was reached only after owners were kidnapped to Fairview, Connecticut). This happened one month after Voloshin's father was killed in Moscow. *Id.*

22. *See* Office of International Criminal Justice, *supra* note 2 (stating that it took law enforcement agencies three years to collect evidence); *see also* Pyle, *supra* note 20, at A11 (noting that case against Ivankov relied heavily on intercepted phone conversations between Ivankov and his associates).

23. Office of International Criminal Justice, *supra* note 2; *see* Pyle, *supra* note 20, at A11 (reporting that in July 1996, Ivankov was convicted for his role in extortion plot); *see also* Stephen Handelman, *Russian Crime Boss Jailed for U.S. Extortion Scheme; Mobster Claims He Was Framed by Soviets, FBI*, *TORONTO STAR*, Jan. 30, 1997, at A17 (discussing how before his sentencing in federal courtroom, Ivankov maintained that he was anti-communist protester persecuted for his beliefs). Ivankov denied any criminal wrongdoing, and claimed he was framed by the corrupt Russian government, former Soviet intelligence services, and the FBI. Handelman, *supra*. Ivankov's lawyer even compared him to well-known anti-Soviet dissidents. *Id.* U.S. Federal Judge Carol Amon sentenced Ivankov to 115 months in prison, and his lawyer claimed he was going to serve only six years and eight months because of time already served. *Id.*

24. Agreement Between the United States and Russia on Cooperation in Criminal Law Matters, with Annex, June 30, 1995, No. KAV 4518, State Dep't No. 96-38 [hereinafter MLAA].

mutual legal assistance treaty<sup>25</sup> (“MLAT”) between Russia and the United States will significantly affect the spread of Russian organized crime in the Russian Federation, the United States, and globally.

### I. RUSSIAN ORGANIZED CRIME, DOMESTIC STATUTORY RESPONSES, AND MUTUAL LEGAL ASSISTANCE TREATIES

Practitioners note that with the introduction of democracy and the breakup of the Soviet Union, Russia has seen a colossal growth of organized crime.<sup>26</sup> The Russian government has undertaken numerous measures in combating organized crime, but has been unable to eradicate the problem.<sup>27</sup> Experts argue that MLATs, which require direct cooperation between law enforcement officials of two nations, are one bilateral mechanism that is available in combating transnational criminal activities.<sup>28</sup>

#### A. *Development of Russian Organized Crime and Its Domestic and Transnational Effects*

Scholars believe that Russian organized crime has had devastating effects on the well being and morale of the Russian people, who consistently express the view that organized crime is one of the biggest problems facing the nation.<sup>29</sup> Practitioners

25. See I.K. Knapp, *Mutual Legal Assistance Treaties as a Way to Pierce Bank Secrecy*, 20 CASE W. RES. J. INT'L L. 405, 405 (1988) (defining mutual legal assistance treaty (or “MLAT”) as treaty that creates binding obligation on parties to provide assistance in criminal investigations and proceedings). MLATs usually require direct exchange of information between the U.S. Department of Justice and its foreign counterpart. *Id.* Such exchange usually occurs without diplomatic requests and judicial involvement. *Id.* at 406.

26. See Peter Daniel DiPaola, *The Criminal Time Bomb: An Examination of the Effect of the Russian Mafiya on the Newly Independent States of the Former Soviet Union*, 4 IND. J. GLOBAL LEGAL STUD. 145, 148 (1996) (describing how criminal world and government officials took advantage of free market reforms); see also Tanya Frisby, *The Rise of Organized Crime in Russia: Its Roots and Social Significance*, 50 EUROPE-ASIA STUDIES 27, 30 (1998) (noting that changing social conditions contributed to growth of criminality).

27. See Frisby, *supra* note 26, at 39-41 (noting apparent weakness of law enforcement institutions).

28. See Knapp, *supra* note 25, at 406-07 (stating that obtaining documentary evidence is most desired form of assistance).

29. See RICHARD LAYARD & JOHN PARKER, *THE COMING RUSSIAN BOOM: A GUIDE TO NEW MARKETS AND POLITICS* 149-51 (Free Press, 1996) (quoting President Boris Yeltsin as saying that “[o]rganized crime has become a direct threat to Russia’s strategic interests and national security”).

note that organized crime has infiltrated the Russian government and is playing a significant role in Russia's political life.<sup>30</sup> In addition, its sophistication and advancement on the international arena have given a cause for concern to many national governments around the world.<sup>31</sup>

### 1. Gangsterism and Its Effect on Russian Society

Experts note that organized crime has existed in the Soviet Union and Russia for decades, but it was only after the demise of the Soviet Union and the introduction of open economic market relations that it acquired threatening proportions.<sup>32</sup> Today's Russia has uncharacteristically high levels of crime compared to both Western nations and former communist countries of Eastern Europe.<sup>33</sup> Moreover, academics have blamed organized crime for very poor economic conditions existing in the Russian Federation.<sup>34</sup>

#### a. Emergence of Russian Organized Crime

Today's Communist politicians in Russia try to present the former Soviet Union as a crime-free society, but scholars note that this portrayal is very far from the truth.<sup>35</sup> Experts note that organized crime has existed in Russia since the time of the

30. See Mike Cormaney, *RICO in Russia: Effective Control of Organized Crime or Another Empty Promise?*, 7 *TRANSNAT'L L. & CONTEMP. PROBS.* 261, 269-70 (1997) (noting how Russian organized crime developed contacts with government officials in order to protect its operations and obtain larger profits).

31. See DiPaola, *supra* note 26, at 179-80 (noting that such concern stems from states' basic need for security). Russia needs the assistance of other countries to fight its organized crime. *Id.* at 181.

32. See Scott P. Boylan, *Organized Crime and Corruption in Russia: Implications for U.S. and International Law*, 19 *FORDHAM INT'L L.J.* 1999, 2004-05 (1996) (describing how, following collapse of Soviet Union, criminals took advantage of lack of commercial regulation); see also *GLOBAL ORGANIZED CRIME PROJECT, RUSSIAN ORGANIZED CRIME 17* (1997) (noting that Russia's economic, political, and social conditions gave rise to organized crime).

33. See LAYARD & PARKER, *supra* note 29, at 150-51 (comparing crime rates in Russia with those of other countries). Russians face the problem of, on the one hand, domestic and street crime, and, on the other hand, organized crime. *Id.* at 151.

34. See *id.* at 155 (stating that crime damages Russian economy by hurting small businesses and government's revenues).

35. See DiPaola, *supra* note 26, at 147-48 (noting that Vadim Bakatin, last chairman of Soviet KGB, admitted that "[a]fter 1917, [the Soviet] crime rate grew just like everywhere else in the world.").



czars.<sup>36</sup> Organized criminal activity in the Soviet Union started in the early 1920s, when burglary and robbery were the only means of survival for hungry and homeless people.<sup>37</sup> In the 1960s, the illegal market for disappearing goods and services grew, such that criminals, with the help of corrupt factory managers and civil servants, shifted their concentration to distribution of hard-to-obtain goods and services.<sup>38</sup> Finally in the 1970s and 1980s, the growth of personal incomes, further development of the illegal market, and increasing corruption led organized crime members to extort and blackmail corrupt businessmen,<sup>39</sup> who, quite understandably, rarely complained to the authorities for fear of losing their livelihood.<sup>40</sup>

Since the breakup of the Soviet Union in 1991 and the development of quasi-capitalist relations in Russia in the late 1980s and 1990s, scholars note that the activities of organized crime members intensified and diversified.<sup>41</sup> At the same time, one commentator notes that the line separating the world of organized crime and that of the Russian government became difficult to distinguish.<sup>42</sup> Scholars believe that the newly created and poorly regulated Russian market created immediately profitable opportunities for criminal organizations and syndicates—composed primarily of former government officials, secret Soviet marketers, and common criminals—that immediately took advantage of the situation.<sup>43</sup>

36. *See id.* at 148 (stating that groups of highwaymen, thieves, and smugglers existed in Russian since 17th century). Later, these criminal groups developed rules and codes of honor. *Id.*

37. *See* Frisby, *supra* note 26, at 32 (stating that after internal power struggle following Bolshevik Revolution, anti-criminal measures led to arrests of members and leaders of criminal groups).

38. *See* DiPaola, *supra* note 26, at 148 (stating that in 1960s criminals began close cooperation with government officials). Criminals within particular regions started forming large criminal enterprises. *Id.*

39. *See* Frisby, *supra* note 26, at 33-34 (stating that by 1970s and 1980s some members of criminal syndicates planned to assert political power).

40. *See id.* at 43 n.21 (explaining that criminals were inclined to rob people who were afraid to complain to authorities).

41. *See generally* DiPaola, *supra* note 26, at 148-49 (quoting Professor Louise Shelley as saying that new criminal coalition embodies “the political and economic power of a criminal class more sophisticated than anything Russia has ever experienced before”).

42. *See id.* at 148 (stating that both criminals and government officials profited enormously through illegal market and corruption).

43. *See* Boylan, *supra* note 32, at 2005 (stating that illegal market is key to understanding Russia’s current problems).

## b. Societal Impact: Crime by the Numbers

In February 1993, less than two years after the breakup of the Soviet Union, Russian President Boris Yeltsin stated that crime had become the major problem for the Russian Federation, and that its scope posed a great danger to the Russian state.<sup>44</sup> Yeltsin noted that criminal activity was injuring the country's economy, asserting a negative effect on Russia's political life, and undermining public morale.<sup>45</sup> Today's Russia has a developing economy, and scholars note that such states usually have uncharacteristically high levels of crime.<sup>46</sup>

In 1994, murders accounted for over 32,000 deaths in Russia—doubling the number of murders in 1991, the last year of the Soviet Union's existence.<sup>47</sup> This figure translates into 21.8 murders per 100,000 people, which is significantly higher than any developed or former communist country.<sup>48</sup> There were more people murdered in Russia in 1993 than during the almost decade long war in Afghanistan.<sup>49</sup> Practitioners state, however, that it is not street crime that poses the greatest threat to the people's existence; it is organized crime.<sup>50</sup>

According to the Russian Ministry of Internal Affairs' 1998 estimate, there are 9000 criminal organizations operating in Russia.<sup>51</sup> A poll conducted in the Russian Far East region in the

44. See LAYARD & PARKER, *supra* note 29, at 149 (noting that some people believe that criminals are now in charge of Russian state).

45. *Id.*

46. Gennady R. Lezhikov, *Statistical Information on Crime and Its Use in Crime Control*, presented at the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Officers in Cairo, Egypt, Apr. 29-May 8, 1995 (visited Sept. 10, 1999) <<http://www.acsp.uic.edu/oicj/pubs/cji/110413.htm>> (on file with the *Fordham International Law Journal*) (noting that crime poses real threat to realization of socioeconomic reforms in Russia).

47. See LAYARD & PARKER, *supra* note 29, at 150 (noting, however, that crime levels rose more slowly or even fell in 1994-95). The number of murders in 1992 and 1993 was 23,000 and 29,000 respectively. *Id.*

48. *Id.* For instance, the U.S. murder rate in 1992 was 9.3 per 100,000 people, Germany and France had murder rates of approximately 4 per 100,000 people, and the figure for Japan was less than 1 per 100,000. *Id.*

49. See DiPaola, *supra* note 26, at 146 (giving numerical data for gang and street crime in Russia).

50. See LAYARD & PARKER, *supra* note 29, at 151 (noting that when Russians complain about crime in Russia and call their country "mafia state," they refer to organized crime).

51. See Gary T. Dempsey, *Mafia Capitalism or Red Legacy?*, Cato Institute (visited Aug. 15, 1999) <<http://www.cato.org/dailys/1-07-98.html>> (on file with the *Fordham*

summer of 1992 showed that one-third of all residents believed that criminals controlled the course of events in their region.<sup>52</sup> A similar poll taken in 1993 in the city of Yekaterinburg indicated that seventy-five percent of the residents believed their city was governed by organized crime.<sup>53</sup> Experts opine that Russian organized crime has invaded every single aspect of Russian life, and its activities include takeover of political power, extortion, theft, violent crime, contract killing, prostitution, gambling, money laundering, and control of the economy.<sup>54</sup>

### c. Effect on the Russian Economy

Practitioners note that Russian organized crime has also had a devastating effect on the Russian economy, menacing legitimate businesses throughout the country.<sup>55</sup> Based on a 1997 study, conducted by a U.S. law professor and published in World Bank's newsletter *Transition*,<sup>56</sup> Russian organized crime deprives the country of its tax base, discourages foreign investment, has a negative effect on the banking sector and financial markets, and intensifies the already existing problem of corruption.<sup>57</sup> This same study estimated that nearly half of the Russian economy is

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*International Law Journal*) (noting that four out of five Russian businesses must pay protection money to criminals). The Cato Institute is a public policy research foundation that undertakes an extensive publications program dealing with various policy issues. *Id.*

52. See LAYARD & PARKER, *supra* note 29, at 153 (stating that another Russian public opinion poll indicated that 49% of Russians rated crime as higher concern than unemployment).

53. See *id.* at 153-54 (discussing possibility that fear of crime leads to stronger public support for aggressively nationalistic, anti-reform politicians).

54. See Peter J. Vassalo, *The New Ivan the Terrible: Problems in International Criminal Enforcement and the Specter of the Russian Mafia*, 28 CASE W. RES. J. INT'L L. 173, 174 (1996) (comparing Russian organized crime to Sicilian Mafia); see also Johanna McGeary, *Russia's Ruble Shakedown*, TIME, Sept. 27, 1999, at 57 (defining money laundering as "converting ill-gotten funds into money that looks legitimate"). The purpose of laundering money is "to make a crime look like a normal transaction." McGeary, *supra*.

55. See generally Jonathan Lynn, *Organized Crime Controls Nearly Half of Russia's Economy, U.S. Study Says*, SEATTLE POST-INTEL., Mar. 20, 1997, at A4 (stating that billions of U.S. dollars leave Russia as result of organized criminal activities).

56. The World Bank Group (visited Sept. 21, 1999) <<http://www.worldbank.org/html/prddr/trans/WEB/trans.htm>> (on file with the *Fordham International Law Journal*). The Transition Newsletter reports on the latest economic, social, and business developments in transition countries of Europe and Asia. *Id.* This newsletter is also published in Russian. *Id.*

57. See Louise I. Shelley, *The Price Tag of Russia's Organized Crime*, TRANSITION, THE WORLD BANK GROUP, Feb. 1997 (visited on Sept. 11, 1999) <<http://www.worldbank.org/html/prddr/trans/janfeb97/art4.htm>> (on file with the *Fordham International Law*

controlled by organized crime, and that billions of U.S. dollars are funneled out of the country as a result.<sup>58</sup> Another study, conducted by the Global Organized Crime Project,<sup>59</sup> estimated that Russian organized crime controls forty percent of private business, sixty percent of state-owned enterprises, and more than half of the country's 1740 banks.<sup>60</sup> In 1997, the Central Bank of Russia announced that three commercial banks transferred a total of US\$500 million, which originated from federal budget funds, into high-yield securities markets.<sup>61</sup> The banks then proceeded to claim market losses, its finances disappeared, and the government was unable to recover its money.<sup>62</sup>

Commentators argue that it is extremely difficult to open up a business in Russia without being negatively affected by organized criminal groups.<sup>63</sup> In 1993, the report by Pyotr Filipov, the head of the analytical center in Moscow, indicated that three-quarters of all Russian private businesses kept between ten and twenty percent of their incomes as bribe money for criminal enterprises.<sup>64</sup> Businessmen must hire bodyguards to protect

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*Journal*) (noting that Russian problem of organized crime cannot be addressed solely at national level).

58. *See id.* (stating that organized crime is responsible for US\$800 million in monthly capital flight). Organized crime negatively affects tax collection. *Id.* According to the Russian customs service, duties are paid on only 35 out of every 1000 cars imported into Russia. *Id.*

59. *See* The Global Organized Crime Project (visited July 15, 1999) <<http://www.Csis.org/goc/>> (on file with the *Fordham International Law Journal*). The Global Organized Crime Project ("GOCP") is one of the initiatives at the Center for Strategic and International Studies, a public policy research institution dedicated to analysis and policy impact. *Id.* The object of GOCP is to assess the breadth, depth, and impact of transnational threats, including international crime, terrorism, information warfare, and weapons of mass destruction proliferation. *Id.* GOCP recommends concrete policy solutions, aimed at the U.S. government and businesses to prepare and respond better to international problems. *Id.*

60. *See International Organized Crime and Global Terrorism: Hearings Before the House Comm. on International Relations*, 105th Cong. 81-82 (1997) (testimony of Arnaud de Borchgrave, Director, Global Organized Crime Project) (stating that 200 of Russia's largest criminal organizations are "global conglomerates").

61. *Id.*

62. *Id.*

63. *See generally* LAYARD & PARKER, *supra* note 29, at 155 (noting that whereas bigger companies can afford to pay ransom to criminal groups, smaller businesses cannot). Sometimes businesses must keep a low profile and refrain from advertising their services to escape criminals' attention. *Id.*

64. *See id.* (noting that purpose of this study, ordered by President Yeltsin, was to find out how crime affected Russian economy).

themselves against racketeers.<sup>65</sup> Moreover, practitioners note that businessman cannot trust the Russian courts and their procedure for solving commercial disputes, and, therefore, often voluntarily hire criminals to collect loans owed to them by counterparts.<sup>66</sup> The Russian Ministry of the Interior's 1993 report claimed that organized crime controlled as much as forty percent of the Russian Gross Domestic Product.<sup>67</sup>

## 2. Russian Organized Crime in the International Arena

Commentators have blamed Russian organized crime for illegal capital outflows from Russia.<sup>68</sup> Russian organized criminal groups are now setting up criminal enterprises in the United States and engage in a variety of criminal activities there.<sup>69</sup> One expert is also worried about Russian organized crime's advancement into South America and the Caribbean, and possible alliances with local organized criminal groups.<sup>70</sup> Finally, law enforcement officials are concerned about Russian criminals' intentions and abilities to receive access to nuclear weapons and materials, which would lead to security concerns of global proportions.<sup>71</sup>

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65. *Id.*

66. *See id.* (quoting director of Round Table of Russian Businesses as saying that "[t]here are no precise or detailed legal procedures for resolving economic conflicts. A banker cannot be sure that his loan will be repaid, a businessman cannot be sure that he will be paid for his goods."). As many smaller companies cannot afford protection, they go out of business or are reluctant to seek out new business opportunities. *Id.*

67. *Id.*; *see* WILLIAM J. BAUMOL & ALAN S. BLINDER, *ECONOMICS: PRINCIPLES AND POLICY* 30 (Dryden Pr., 6th ed. 1994) (defining gross domestic product as measure of size of country's economy). Gross domestic product is, roughly, the money value of all the goods and services produced in a given year. *Id.*

68. Cormaney, *supra* note 30, at 265-66.

69. *See* Shoshanah V. Asnis, *Controlling the Russian Mafia: Russian Legal Confusion and U.S. Jurisdictional Power-Play*, 11 *CONN. J. INT'L L.* 299, 307 (1996) (briefly outlining history of Russian organized crime in United States).

70. *See* Farah, *supra* note 12, at A1 (quoting U.S. drug-control policy director as saying that "the Russians, along with the Nigerians, are the most threatening criminal organizations based in the United States."). U.S. law enforcement officials are worried about increasing contacts between Russian and Colombian organized criminal groups. *Id.*

71. Wendy L. Mirsky, *The Link Between Russian Organized Crime and Nuclear-Weapons Proliferation: Fighting Crime and Ensuring International Security*, 16 *U. PA. J. INT'L BUS. L.* 749, 752 (1995).

## a. Criminal Activities and Capital Outflows

One commentator states, however, that Russia is only a small part of Russian organized crime's activities.<sup>72</sup> The same expert has opined that Russian criminals have established their enterprises throughout Europe and in the United States, and their activities include drug trafficking, money laundering, prostitution, and trafficking of nuclear weapon materials.<sup>73</sup> The head of the National Central Bureau of Interpol in Moscow claimed in 1997 that Russian organized crime illegally transfers US\$12 billion to international locations every year, usually by setting up fictitious companies in Cyprus, Greece, Spain, and other locales.<sup>74</sup> A practitioner believes that Russian organized crime exported over US\$100 billion of capital from Russia during the first three years of market reforms, and a typical outflow of capital is equal to US\$2 billion per month.<sup>75</sup>

According to experts, money laundering is a major part of Russian organized criminal activity.<sup>76</sup> Organized crime has deposited close to US\$40 billion in Swiss banks, and law enforcement officials suspect that the money is being used to purchase Swiss businesses, such as restaurants and retail stores.<sup>77</sup> Russian police sources believe that close to US\$7 billion in proceeds from organized crime were exported from the Soviet Union and

72. See Vassalo, *supra* note 54, at 174 (stating that Russian organized crime "is a union of racketeers without equal").

73. See *id.* (citing one commentator as stating that Russian organized crime "is engaged in extortion, theft, forgery, armed assault, contract killing, swindling, drug running, arms smuggling, prostitution, gambling, loan sharking, embezzling, money laundering, and illegal marketing—all on a monumental and increasingly international scale.").

74. See Richard Thomas, et al., *The Guardian Features Page*, *GUARDIAN* (London), Jan. 4, 1997, at 1 (stating that FBI and Russian police uncovered illegal export of US\$140 million worth of diamonds by former Russian minister).

75. See Cormaney, *supra* note 30, at 265-66 (noting that Russian organized criminal groups continue to expand at international level); see also Andrew Higgins, *Russia's Prosecutor General Launches Criminal Case Against Moscow Bank*, *WALL ST. J.*, Sept. 29, 1999, at A4 (noting that Viktor Gerashchenko, head of Russia's Central Bank, estimated that US\$1 billion leaves Russia illegally each month).

76. See *The Professional Newswire, A Roundup of Money Laundering News*, 8 No. 7 *MONEY LAUNDERING L. REP.* 8 (Feb. 1998) (stating that Russia and Uzbekistan approved draft agreement of cooperation against illegal financial transactions). According to the press release, the agreement, signed on January 23, 1998, "provides for an exchange of relevant information and cooperation in . . . activities aimed at exposing illegal financial operations and assisting in returning property." *Id.*

77. See *id.* (citing Swiss prosecutor stating that money laundering activities may become security threats to Switzerland).

Russia to Germany between 1988 and 1992.<sup>78</sup> There is a report indicating that Russian firms use the closely-located Baltic states to launder their profits from illegal activities.<sup>79</sup>

Russian organized crime now uses Pacific region countries to launder its illegal financial gains.<sup>80</sup> Experts believe that Russian criminal organizations use U.S. middlemen to open accounts and charter banks in the Pacific region in order to hide the illegal Russian origin of the finances.<sup>81</sup> In 1999, British law enforcement agencies began investigations into the money-laundering activities of Russian organized crime in their country,<sup>82</sup> and French authorities also opened an inquiry into the import of illegal Russian finances into France.<sup>83</sup> Recently, one Russian businessman, Semion Mogilevitch, whom experts believe to be one of the most important figures of Russian organized crime, used Canadian stock exchanges for his money-laundering activities.<sup>84</sup> Law enforcement officials believe that the company in-

78. See *Recent Developments in Transnational Crime Affecting U.S. Law Enforcement and Foreign Policy; Mutual Legal Assistance Treaty in Criminal Matters with Panama*, Treaty Doc. 102-15; and *1994 International Narcotics Control Strategy Report: Hearing Before the Senate Subcomm. On Terrorism, Narcotics and International Operations, Comm. on Foreign Relations*, 103rd Cong. 154 (1994) (statement of Rensselaer Lee, President, Global Advisory Service) (arguing that illegal capital outflows help to develop Russian criminal enterprises abroad).

79. See *Baltics Used for Money-Laundering, Russian TV Claims*, BALTIC NEWS SERV., Oct. 8, 1998, available in 1998 WL 20195496 (stating that companies used Baltic states to transfer money to off-shore companies).

80. See *Russian Mafia Using Pacific Region as Money Laundering Base: OECD*, AGENCE FRANCE-PRESSE, Feb. 11, 1999, available in 1999 WL 2544874 (quoting expert as saying that "[a] heavy concentration of financial activity related to Russian organised crime has been observed, specifically in Western Samoa, Nauru, Vanuatu and the Cook Islands.>").

81. See *id.* (stating that local authorities are suspicious of increasing Russian activity in Pacific region).

82. See Raymond Bonner, *Russian Organized Crime Penetrates U.S. Markets, Mob Kingpins Posing as Venture Capitalists*, NEW ORL. TIMES, July 25, 1999, at A19 (stating that British intelligence and law enforcement agencies concentrated on one Russian businessman with personal wealth of US\$100 million).

83. See *French Investigating Alleged Russian Money Laundering*, AGENCE FRANCE-PRESSE, Sept. 9, 1999, available in 1999 WL 25102873 (noting that French investigation is part of inquiry into alleged misuse of International Monetary Fund's loans to Russian Federation).

84. See Paul Waldie, *Mob Boss Picked Canadian Exchanges for YBM Scam; Court Told Russian Selected Canada for Alleged Money-Laundering Plan Because He Thought Markets Had Lax Rules*, GLOBE & MAIL, June 8, 1999, at B1 (stating information concerning use of Canadian stock exchanges as laundering medium emerged in U.S. District Court in Philadelphia as part of plea agreement involving Semion Mogilevitch's criminal enterprise).

volved in this scam, YBM Magnex International Inc., was the cover for Mr. Mogilevitch's illegal activities.<sup>85</sup> Russian money laundering operations have likewise been uncovered in Sweden<sup>86</sup> and Spain.<sup>87</sup>

In 1998, authorities in Switzerland adjudged one Russian businessman on charges of money laundering and membership in a criminal organization, as well as violations of Swiss property laws.<sup>88</sup> Because Swiss officials could not obtain sufficient evidence, a Geneva court dismissed charges of involvement in a criminal organization, leaving only the lesser charge of failing to observe Swiss rules limiting foreigners' right to purchase land.<sup>89</sup> Swiss law enforcement authorities suspect that more than 150 people and ninety Swiss firms are tied to Russian organized crime.<sup>90</sup> From July to September 1999, the Swiss government froze fifty-nine bank accounts and ordered banks to provide information about certain Russian citizens, including former and current members of the Russian government, having accounts in Switzerland.<sup>91</sup> In September 1999, the Italian newspaper *Corriere Della Sera* published a list of twenty-four Russian citizens who face

85. See *id.* (alleging that Mogilevitch owned at least 50% of YBM Magnex International Inc.). Ernst & Young, YBM Magnex International Inc.'s receiver, pleaded guilty on behalf of the company for fraud, and agreed to a US\$3 million fine. *Id.*

86. See *Swedish Police Uncover Large Russian Money-Laundering Scam*, AGENCE FRANCE-PRESSE, July 23, 1997, available in 1997 WL 2158034 (stating that Swedish police uncovered money laundering operation involving US\$6.8 million stolen from Russian Federation).

87. See *Russians Arrested, Accused of Money-Laundering; Unattributed Report: "12 Russian Mafia Members Held for Money-Laundering"*, WORLD NEWS CONNECTION, July 25, 1999, available in 1999 WL 21974252 (noting that suspects illegally exported over US\$50 million from Russia). The National Police's Drugs and Organized Crime Squad in Marbella and Malaga arrested a group that included seven Russians, three Belorussians, and a Lithuanian. *Id.*

88. See Naomi Koppel, *Swiss To Try Russian Mafia Suspect*, ASSOCIATED PRESS, Nov. 28, 1998, available in 1998 WL 23034085 (stating that after breakup of former Soviet Union, Switzerland became money laundering locale for Russian criminal figures). The Russian businessman, Sergei Mikhailov, was arrested in Switzerland in 1996. *Id.*

89. See *Legal Route Way To Beat Russia's Mob*, MOSCOW TIMES, Dec. 15, 1998, at 10 (stating that all evidence presented against Mikhailov was circumstantial). Prosecutors claimed Mikhailov belonged to the Solntsevo criminal organization, based in Moscow. *Id.* A key witness was murdered during the trial and other witnesses were afforded police protection. *Id.*

90. Gail Robinson, *The Russian Mafia (Money Laundering in Switzerland)*, 46 WORLD PRESS REVIEW, No. 6, June 1, 1999, at 18.

91. See John Tagliabue, *Dozens of Accounts Are Frozen as Prosecutors Search for Evidence of Money Laundering by Kremlin Brass*, ORANGE COUNTY REG., Sept. 4, 1999, at A29 (noting that investigation was launched upon request by Russia's Chief Prosecutor, Yuri



charges of money laundering in Switzerland.<sup>92</sup> This list even includes two children, who are close to a Russian governmental official.<sup>93</sup>

#### b. Russian Organized Crime in the United States

Commentators note that Russian criminals have had a presence in the United States for a number of years.<sup>94</sup> In the 1970s and 1980s, a group of ethnic Russian criminals, with no ties to their motherland, operated in New York, specializing in white-collar crimes.<sup>95</sup> One practitioner believes that the most significant growth of Russian organized crime in the United States occurred, however, after the collapse of the Soviet Union in 1991.<sup>96</sup> As a result of the democratization in Russia and the liberalization of Russian emigration policies, a new wave of violent, poorly-educated criminals entered the United States.<sup>97</sup> In a relatively short time, this new wave of criminals not only took over the white-collar criminal industry in the United States, which was the specialty of the older Russian criminal groups, but also expanded its activities to include racketeering, drug trafficking, money laundering, extortion, and prostitution.<sup>98</sup>

In a recent case involving the Bank of New York Co., the sixteenth largest bank in the United States, federal authorities are investigating whether high-ranked Russian officials used the

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Skuratov). Those investigated included Pavel Borodin, head of Yeltsin's property management team and Oleg Soskovets, a former deputy prime minister of Russia. *Id.*

92. See *Even Children Are Accused of Money Laundering in Russia*, WHAT PAPERS SAY, Sept. 6, 1999, at 11 (noting that Swiss investigator's letter to Swiss banks stated that they "are supposed to inform [him] whether the persons listed below had any banking relations with [these banks]").

93. See *id.* (stating that parent of these children is close to Pavel Borodin). The list includes Lyuba Lyulkina, who is eight years old, and her brother Ivan Lyulkin, who is 18. *Id.*

94. See Boylan, *supra* note 32, at 2012 (noting that activity of Russian organized crime in United States spread significantly after collapse of Soviet Union).

95. See Asnis, *supra* note 69, at 307 (describing this wave of white-collar criminals as "the second team").

96. See generally Daniel L. Lungren, *Russian Organized Crime, Report of the Office of the Attorney General of the State of California*, Mar. 1996 (visited Aug. 17, 1999) <<http://www.alternatives.com/crime/RUSORG1.HTML>> (on file with the *Fordham International Law Journal*) (describing numerous activities of Russian criminal groups in state of California).

97. See Asnis, *supra* note 69, at 307-08 (describing this new wave of violent criminals as "the first team").

98. See *id.* at 308 (stating that biggest problem facing U.S. law enforcement is reluctance of victims and witnesses to cooperate with authorities).

bank to launder billions of dollars linked to Russian organized crime.<sup>99</sup> One expert notes that Russian organized crime and government officials may have laundered up to US\$15 billion through the Bank of New York,<sup>100</sup> while the bank itself received US\$240 million in monthly fees.<sup>101</sup> Authorities suspect that the laundered money may be part of economic aid provided to Russia by the International Monetary Fund.<sup>102</sup> The Bank of New York suspended Lucy Edwards, a London-based vice president of the bank and Natasha Kagalovsky, the bank's vice president in charge of the Eastern Europe Division, over the probe.<sup>103</sup> Authorities believe that this affair may be one of the largest money laundering operations ever uncovered in the United States.<sup>104</sup>

Narcotics are today a large source of income for Russian or-

99. See Paul Beckett et al., *Rival Alerted FBI to Activity at Bank of New York*, WALL ST. J., Aug. 20, 1999, at A4 (stating that Republic National Bank of New York alerted Bank of New York Co. of money laundering activities).

100. See Jesse Angelo, *Outwardly Calm, European Money Houses Run Scared*, N.Y. POST, Aug. 31, 1999, at 14 (noting that concerned European banks search their accounts for evidence of money laundering).

101. See Al Guart, *Bank Made Killing on Mob: \$720M in Profits from Russian Crime Dough*, N.Y. POST, Aug. 21, 1999, at 9 (noting that Bank of New York Co. charged one Russian bank US\$56 per money wire transfer, as much as six times above standard rate).

102. See Paul Beckett & David S. Cloud, *Russian Mob Role is Probed in IMF Losses*, WALL ST. J., Aug. 25, 1999, at A3 (stating that law enforcement authorities have investigated account activity in other U.S. banks).

103. See Jesse Angelo & Al Guart, *Bank of N.Y. Probers Eye Yeltsin Ties*, N.Y. POST, Aug. 27, 1999, at 7 (citing Russian top prosecutor announcing he was going to start inquiry into money laundering operation); see also Michael Allen, *Prosecution Faces Hurdles in Bank Case*, WALL ST. J., Aug. 30, 1999, at A3 (noting that Lucy Edwards was later fired for, among other things, "gross misconduct" violations); Jesse Angelo, *Veep Fired in Bank of N.Y. Probe Is Suing*, N.Y. POST, Sept. 30, 1999, at 24 (noting that Lucy Edwards is suing Bank of New York for unfair dismissal and failure to follow proper procedure); Andrew Higgins, *Moscow Begins To Investigate Money Trail*, WALL ST. J., Aug. 27, 1999, at A2 (stating that Russian domestic intelligence agency began its own investigation); Ann Davis, *First Indictments Are Handed up in Money-Laundering Inquiry*, WALL ST. J., Oct. 6, 1999, at A4 (noting that federal jury indicted Lucy Edwards, her husband, Peter Berlin, and Russian businessman Aleksey Volkov on charges of conspiracy to illegally transmit US\$7 billion). U.S. prosecutors have not sought indictments on charges of money laundering, which are more difficult to prove. Davis, *supra*.

104. Jack Kelley & Tom Lowry, *Russian Prosecutor, IMF Join Mob Probe FBI Tracks \$10B Paper Trail Through Bank of New York*, USA TODAY, Aug. 24, 1999, at B1. See also John Tagliabue, *Italy Sees Russian Mob Link Through Bank of New York*, N.Y. TIMES, Sept. 28, 1999, at A1 (noting that part of money allegedly laundered through Bank of New York resulted from Russian organized criminal activities in Italy). Members of Russian organized crime raised money in Italy through racketeering, extortion, and tax fraud. Tagliabue, *supra*.

ganized crime.<sup>105</sup> Many Russian criminals, in cooperation with other international crime groups, employ their transnational connections in Moscow and Poland to traffic and sell drugs in the United States.<sup>106</sup> In the 1993 case of *United States v. Podlog*,<sup>107</sup> two Russian drug dealers, along with members of the Italian Mafia, were tried and convicted for collaborating to import drugs into the United States.<sup>108</sup> Law enforcement officials claimed that Russian immigrants David Podlog and Alexander Moysif received heroin delivered to the United States from Poland, and later resold it to a Sicilian-American criminal organization.<sup>109</sup> In February 1993, law enforcement authorities in Los Angeles intercepted a ten pound shipment of opium that was delivered from Russia, hidden in a set of matrioshka dolls.<sup>110</sup> Experts note that a significant number of Russian immigrants were indicted in New York for illegal import, distribution, and sale of drugs in the early 1990's.<sup>111</sup> Today, Colombian drug cartels use Russia as a route to ship cocaine from Latin America to Europe, and significant quantities of drugs have already been confiscated by the Russian authorities.<sup>112</sup>

Several members of Armenian organized criminal groups in

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105. See Thomas, *supra* note 74, at 1 (stating that raw opium enters Russia from Afghanistan, Krygistan, and Ukraine); see also *Rushailo Outlines Measures To Combat Transnational Crime*, ITAR TASS, June 4, 1999, available in 1999 WL 17671644 (stressing importance of cooperation between countries comprising Commonwealth of Independent States).

106. See Sara Jankiewicz, *Glasnost and the Growth of Global Organized Crime*, 18 Hous. J. INT'L L. 215, 238 (1995) (noting that cooperation of Russian criminals in United States with Italian Mafia proved beneficial and profitable for both crime groups).

107. *United States v. Podlog*, et al., No. S2 92 Cr. 374 (S.D.N.Y. 1994), *aff'd in part*, 35 F.3d 699 (2d Cir. 1994). See *Former Soviet Republics New Source of Heroin Entering West*, AGENCE FRANCE-PRESSE, April 1, 1993, available in 1993 WL 10705708 (stating that former communist countries have potential to flood western countries with narcotics). According to Russian estimates, wild marijuana covers 1000 sq. miles of the former Soviet Union. *New Source of Heroin*, *supra*.

108. See Asnis, *supra* note 69, at 308 (stating that crimes committed by Russian criminal groups are comparable to those committed by Italian Mafia).

109. See *New Source of Heroin*, *supra* note 107 (citing U.S. law enforcement agent stating that heroin is delivered from southeast or central Asia to Moscow and then transported to Poland for distribution in Western countries).

110. *Id.*

111. See JAMES O. FINCKENAUER & ELIN J. WARING, *RUSSIAN MAFIA IN AMERICA: IMMIGRATION, CULTURE, AND CRIME* 157 (Northeast. U. Press 1998) (noting that one suspect traveled from Thailand to Denmark with narcotics hidden in television picture tube). U.S. authorities also indicted Russian immigrants in New Jersey and Pennsylvania for production of crack vials. *Id.*

112. Thomas, *supra* note 74, at 1.

California were tried and convicted in 1994 of extortion, kidnapping, and attempted murder.<sup>113</sup> Several years ago, a number of professional Russian hockey players working in the United States complained that Russian criminal enterprises extorted money from them, and threatened that if their demands were not met, the players' families' well-being in Russia would be in jeopardy.<sup>114</sup> Pavel Bure, who then played for the Vancouver Canucks of the National Hockey League, reportedly made payments to members of Russian organized crime.<sup>115</sup> Russian criminals also targeted Alexander Mogilny for extortion, but he was able to avoid the threats with the help of the FBI.<sup>116</sup> Mobsters demanded protection money from another Russian hockey player in the United States, Alexei Zhitnik, who, instead of going to the authorities, went to a more powerful criminal group, which was able to solve the problem.<sup>117</sup> Investigators report that close to eighty percent of Russian hockey players in the United States and Canada make regular payments to Russian organized crime.<sup>118</sup>

One report notes that highly-educated Russian white-collar criminals continue engaging in fraudulent activities.<sup>119</sup> In Los Angeles, a physician and a graduate of Moscow's Missile Construction Institute allowed patients to bill insurance companies for non-existent injuries and claims, perpetrating a fraud that cost insurance companies US\$1 billion.<sup>120</sup> Russian organized crime members also cause major economic harm to U.S. taxpay-

113. See Lungren, *supra* note 96 (stating that this group was responsible for extorting money from members of Armenian community).

114. Boylan, *supra* note 32, at 2012.

115. See Kevin Sherrington, *Russians Come to NHL Freely, but Mafia Is Never Far Behind*, DALLAS MORN. NEWS, May 4, 1997, at B1 (noting existence of videotape of Bure's testimony about one man threatening to break his legs).

116. See GLOBAL ORGANIZED CRIME PROJECT, *supra* note 32, at 46 (stating that sports in Russia is interconnected with organized crime).

117. See Gary T. Dempsey & Aaron Lukas, *Is Russia Controlled by Organized Crime?*, USA TODAY, May 1, 1999, at 32 (quoting Alexei Zhitnik as stating "[t]he cops can't do anything. No rules. No laws."). Many Russian citizens share Zhitnik's views. *Id.*

118. See Fred Girard, *Fetisov Denies Links to Mob*, DETROIT NEWS, Apr. 9, 1998, at D1 (noting that president of Russian hockey federation was murdered in Russia in 1997).

119. See Sebastian Smith, *Savvy, Ruthless Russian Mafia Moves into U.S.*, AGENCE FRANCE-PRESSE, Mar. 10, 1994, available in 1994 WL 9599858 (quoting FBI spokesman as stating that "[w]e consider them a problem . . . . Most of the Russian-type crime groups have been involved in very significant white-collar crime activity.").

120. *Id.*

ers by engaging in fuel tax fraud.<sup>121</sup> Taking advantage of a law that permits distribution companies to defer paying excise taxes until gasoline is actually transferred to a retailer, Russian white-collar criminals were able to sell gasoline to independent retailers with the invoices claiming that all taxes had been paid.<sup>122</sup> When government officials came to collect the unpaid federal excise taxes, they discovered that the distribution company existed only on paper.<sup>123</sup> In August 1995, the U.S. government indicted twenty-five people, including fifteen Russian immigrants, on charges connected to a fuel tax evasion scheme.<sup>124</sup> U.S. law enforcement authorities believe that this operation, which involves the evasion of US\$140 million in state and federal fuel taxes, is the largest motor-fuel tax evasion case in U.S. history.<sup>125</sup> This case produced seventeen guilty pleas,<sup>126</sup> and a federal jury in the U.S. District Court in Camden, New Jersey, on June 19, 1998, convicted four defendants of participating in this illegal operation.<sup>127</sup>

Practitioners indicate that Russian criminal activities also include production and sale of counterfeit credit cards.<sup>128</sup> After

121. See FINCKENAUER & WARING, *supra* note 111, at 244 (indicating that fuel fraud cases, in addition to economic damage, also create physical and psychological harm caused by extortion and intimidation).

122. See *id.* at 150-51 (noting that four or five traditional organized crime families in New York participated in this fraudulent activity). Such operations are also known as daisy-chain schemes. *Id.* at 150.

123. See *id.* at 152 (noting that Russian immigrants were involved in many schemes in various jurisdictions, including California, New Jersey, New York, and Pennsylvania).

124. See *id.* at 244 (citing U.S. officials stating that this case demonstrated how Russian crime was developing in United States).

125. See *Four Convicted in Largest Motor Fuel Tax Fraud in U.S. History*, U.S. DEP'T OF TRANSP., June 26, 1998, available in 1998 WL 356011 (stating that this case involved tax-evasion scheme operating in Delaware, Florida, Georgia, New Jersey, New York, and Pennsylvania).

126. See *id.* (noting that this case was brought by U.S. Department of Transportation's Office of Inspector General, Internal Revenue Service, FBI, and U.S. Department of Justice).

127. See *id.* (noting that jury acquitted two defendants, John Ruocco of New Jersey and Michael Lipkin of New York City). The jury convicted Daniel Enright on charges of conspiracy, wire fraud, money laundering, tax evasion, and a currency reporting violation; Demetrios Karamanos on charges of conspiracy, wire fraud, money laundering, and tax evasion; Richard Pedroni on a conspiracy charge; and Mary Ingram on charges of conspiracy, wire fraud, money laundering, and tax evasion. *Id.*

128. FINCKENAUER & WARING, *supra* note 111, at 156; see Abraham Abramovsky, *Prosecuting the "Russian Mafia": Recent Russian Legislation and Increased Bilateral Cooperation May Provide the Means*, 37 VA. J. INT'L L. 191, 198-99 (1996) (noting that some counterfeit credit cards were sold to Russian immigrants in Brighton Beach, New York).

obtaining information about active accounts, criminals then encode the required information into counterfeit credit cards.<sup>129</sup> The card is later used to purchase merchandise from outside vendors, some of whom are also part of the criminal conspiracy.<sup>130</sup> In one case, law enforcement authorities arrested two Russian immigrants who attempted to use a counterfeit credit card to purchase a US\$12,000 photocopier.<sup>131</sup>

### c. Advancements into South America and the Caribbean

U.S., European, and South American police officials report that Russian criminal groups are advancing into South America and the Caribbean.<sup>132</sup> Members of Russian organized crime, attracted by the protective bank secrecy laws of Caribbean nations such as Antigua and Aruba, have opened banks in Caribbean countries and use them to launder money that originates from countries with stricter banking laws.<sup>133</sup> According to law enforcement sources, the Caribbean is also attractive to Russian organized crime because there is a growing market for drugs in Eastern Europe.<sup>134</sup>

In September 1997, one newspaper reported that members of Russian organized crime were establishing an alliance with

129. See Abramovsky, *supra* note 128, at 198 (noting that one such group purchased large amount of goods over three-year period in different U.S. states).

130. See *id.* (noting that one group of Russian criminals used such scam in 1994 to earn over US\$500,000 per month). Some of the counterfeit credit cards and currency were used outside of the United States. *Id.*

131. See FINCKENAUER & WARING, *supra* note 111, at 156 (noting that some counterfeit cards were carelessly made, with such obvious errors as misspellings in names of banks).

132. See Farah, *supra* note 12, at A1 (noting that growing number of alliances between Russian and Colombian organized criminal groups is most dangerous trend in global drug smuggling).

133. See *id.* (noting that many offshore banks around Caribbean are linked with banks in Russia that are controlled by organized crime). A U.S. Drug Enforcement Administration special agent in charge of the Caribbean claimed, “[w]e have identified a number of Russian organizations in the Caribbean and see a dramatic increase in their investments in hotels and gambling . . . . They are very tight organizations, very difficult to penetrate, and they present us with language problems. Gathering intelligence is a problem.” *Id.*

134. See *id.* (citing U.S. and European intelligence sources stating that members of Russian organized crime and representatives of Cali cocaine cartel have met on Caribbean islands of Antigua, Aruba, and St. Vincent); see also Joshua H. Warmund, Comment, *Removing Drug Lords and Street Pushers: The Extradition of Nationals in Colombia and the Dominican Republic*, 22 *FORDHAM INT’L L. J.* 2373, 2394-95 (1999) (describing Dominican Republic’s role as gateway for Colombian drug shipments).

Colombian drug cartels, aimed at sending weapons to South America in exchange for narcotics heading to Europe.<sup>135</sup> U.S. and European intelligence officials are believed to have evidence of several Russian ships entering the northern Colombian port of Turbo in 1997 and unloading shipments of military equipment in exchange for drugs.<sup>136</sup> One expert's fear of Russian organized crime stems from the fact that it consists of many well-educated, capable members all over the world, all with access to sophisticated weapons and equipment.<sup>137</sup>

#### d. Providing Access to Nuclear Weapons

There is substantial evidence that members of Russian organized criminal groups are seeking access to nuclear materials because of their potential for enormous profit.<sup>138</sup> Experts believe that Russian organized criminal groups are close to receiving access to the former Soviet Union's nuclear arsenal<sup>139</sup> and that they will then try to resell or trade these nuclear materials on the international illegal market.<sup>140</sup> Organized criminal groups that gain access to nuclear weapons and materials create clear security concerns to both Russia and the United States.<sup>141</sup>

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135. Farah, *supra* note 12, at A1. Law enforcement authorities believe that Russian criminal groups attempted to sell Colombian drug traffickers a submarine, helicopters, and surface-to-air missiles. *Id.*

136. *See id.* (noting that authorities believe Russian vessels imported shipments of assault rifles and rocket-propelled grenades).

137. *See id.* (quoting FBI deputy assistant director stating that “[w]hen [Russian criminal organizations] overlap with other criminal groups, they tend to set up cooperative efforts . . . . They learn from the other groups, and they work together. No one else does that.”).

138. *See* Mirsky, *supra* note 71, at 752 (analyzing potential nuclear threat that Russian organized crime presents to international security).

139. *See* Jankiewicz, *supra* note 106, at 240 (quoting German Minister of State as saying that “Russian government officials as well as international networks are involved in the leakage of the dangerous materials.”). U.S. Defense and Energy Department is trying to cooperate with the Russian authorities in controlling and protecting nuclear materials, but the program has not had much success. *Id.* at 242.

140. *See* Mirsky, *supra* note 71, at 761-62 (noting that organized criminal groups take advantage of poorly guarded borders).

141. *See Challenges to U.S. Security in the 1990's: International Organized Crime and Nuclear Security: Hearings Before the House Subcomm. On International Security, International Organizations and Human Rights, Comm. on Foreign Affairs, 103rd Cong. 75-77 (1994)* (statement of R. James Woolsey, Director, Central Intelligence Agency) [hereinafter *Woolsey*] (explaining that most cases of nuclear material smuggling have not involved organized criminal groups). Most cases of nuclear smuggling involve individuals or groups with no visible connections to organized criminal groups. *Id.* at 76. For example, a military officer with access to nuclear weapons or an employee at a nuclear re-

There are also possibilities that authoritarian states, such as Iran, Libya, and North Korea may try to acquire nuclear weapons or material from organized criminal groups in order to enhance their weapons development programs.<sup>142</sup>

There have already been cases of low-enriched uranium, medical and other radioactive isotopes, and scam materials being offered for sale on the illegal market.<sup>143</sup> In June 1994, Russian law enforcement authorities arrested three men for possessing three kilograms of enriched uranium.<sup>144</sup> In May 1994, German police searched the garage of a person suspected to be involved in counterfeiting operations, expecting to find printing equipment, and instead discovered plutonium.<sup>145</sup> An undisclosed nation allegedly paid a suspect subsequently arrested in this case US\$100 million to purchase the weapons-grade plutonium.<sup>146</sup> In August 1994, in what authorities believe to be the biggest seizure of nuclear materials ever,<sup>147</sup> the German police seized 350 grams of plutonium stored in a suitcase on board a Lufthansa airlines flight from Moscow to Munich.<sup>148</sup> Ironically,

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search institute is in position to steal weapons-grade nuclear materials and pass them on to interested groups. *Id.*

142. *Id.* James Woolsey stated that “[t]he inherent difficulties of dealing with an essentially criminal target that affects our national security interests are compounded in Russia, a country that is still undergoing a radical transformation as it comes to grips with the staggering problems left in the wake of over 70 years of communism.” *Id.* at 77; see also Peter, *supra* note 19 (noting that in November 1997, Iranian national was arrested in Moscow for trying to obtain secret documents from missile specialist).

143. See Woolsey, *supra* note 141, at 76-77 (indicating that Russian organized criminal groups are possibly involved in these activities). While low grade nuclear materials and radioactive isotopes cannot be used to make nuclear weapons, terrorists can use them as supplements to conventional bombs to achieve low level radioactive contamination. *Id.* at 77.

144. See *id.* at 76 (stating also that janitor at unspecified Moscow facility stole uranium from plant).

145. Thom Shanker, *Munich Drama Just Hints at Wider Plutonium Intrigue in Germany*, CHI. TRIB., Aug. 21, 1994, at 7.

146. *Id.*; see Bruce W. Nelan, *Formula for Terror: The Former Soviet Arsenal Is Leaking into the West, Igniting Fears of a New Brand of Nuclear Horror*, TIME, Aug. 29, 1994, at 46 (noting that German police confiscated six grams of plutonium from garage of German businessman arrested for counterfeiting).

147. See Nelan, *supra* note 146, at 46 (noting how Bavarian Interior Minister described this confiscation as “the biggest-ever plutonium find in Germany, and probably the world”).

148. See *id.* (noting that confiscated plutonium, enriched to 87%, was usable for making nuclear bombs); see also *Plutonium Seizure Masterminded by German Intelligence: Russia*, AGENCE FRANCE-PRESSE, Aug. 31, 1994, available in 1994 WL 9565781 (noting that only few kilograms of plutonium are needed to make atomic bomb); Shanker,



Russian Deputy Minister for Atomic Energy, Viktor Sidorenko, was on that flight.<sup>149</sup> German officials stated that Sidorenko was not a suspect, but they made it clear that they had no doubts that the seized plutonium arrived from Russia.<sup>150</sup>

Suspicious accidents have occurred at Russian nuclear storage sites.<sup>151</sup> In September 1998, at Russia's largest plutonium storage site, a sergeant killed two guards and fled.<sup>152</sup> Access to nuclear materials has been facilitated by the high numbers of unemployed Russian nuclear scientists existing since the collapse of the Soviet Union.<sup>153</sup> These individuals may provide the essential connection between organized criminal groups, which have the resources to attract these scientists and the nuclear industry.<sup>154</sup>

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*supra* note 145, at 7 (stating that seizure of plutonium was result of carefully planned operation). German law enforcement authorities arrested Justiniano Torres, a native of Colombia, and two of his accomplices. Shanker, *supra*.

149. See Nelan, *supra* note 146, at 46 (stating that Viktor Sidorenko's agency supervises stocks of fissionable materials in Russia).

150. See *id.* (stating that German Chancellor Helmut Kohl sent German intelligence coordinator to Moscow to discuss problem of nuclear proliferation with Russian officials); see also Shanker, *supra* note 145, at 7 (quoting Bavaria's chief prosecutor stating that "[t]he suspects never once during the entire negotiations asked about who would be the end user. They knew it was for resale, though. They asked for no other information. They were just desperate to make the sale."); *Plutonium Seizure Masterminded by German Intelligence*, *supra* note 148 (quoting Russian official that plutonium was "put on a Lufthansa plane by the German secret service to discredit Russia"). Russian officials denied that the seized plutonium originated in Russia, but Russian scientists refused to rule out such possibility. *Plutonium Seizure Masterminded by German Intelligence*, *supra*; but see Carey Goldberg, *Russians Seize 22 Pounds of Uranium; Though It Was Non-Weapons-Grade Material, the Seizure Reflects a Crackdown*, AUSTIN AMER.-STATES., Aug. 25, 1994, at A7 (noting that Russian government promised to work harder to prevent nuclear smuggling). Shortly after the Lufthansa incident, Russian security officers seized 22 pounds of uranium, which was stolen from a nuclear research complex. Goldberg, *supra*. The confiscated uranium, however, was not weapons-grade, and was good only for industrial use. *Id.*

151. See Barbara Slavin, *Nuclear Weapons Threat Lurks in Russia; Poorly Paid Guards Are a Security Concern*, USA TODAY, Nov. 24, 1998, at 20A (quoting expert on weapon nonproliferation that "[t]he Russian economy today is the world's greatest proliferation threat"). Russia currently possesses 1500 tons of nuclear fuel, enough to make 70,000 bombs. *Id.*

152. See *id.* (noting that authorities do not believe any plutonium was stolen).

153. See generally Mirsky, *supra* note 71, at 765 (describing "brain drain" problem in Russian nuclear industry); see also Nelan, *supra* note 146, at 46 (noting that 100,000 workers employed in Russian nuclear plants receive low salaries or get no pay at all for long periods of time).

154. See Mirsky, *supra* note 71, at 765-66 (stating that U.S. Congressional Office of Technology Assessment studies Russian nuclear security and "brain drain" problem in order to investigate problems of nuclear proliferation in Russia); see also Nelan, *supra*

### B. *Russia's War on Organized Crime: Laws and Decrees*

In 1993, President Yeltsin issued the Presidential Decree *On Urgent Measures Aimed at Protecting the Population from Banditry and Other Manifestations of Organized Crime*<sup>155</sup> (or "Decree"), which was designed to curb the spread of criminal activities.<sup>156</sup> Two years later, Russian legislators adopted the new Criminal Code of the Russian Federation<sup>157</sup> (or "Criminal Code"), which has provisions that specifically address the problem of organized criminal groups and activities associated with them.<sup>158</sup>

#### 1. Yeltsin's 1994 Decree

Practitioners note that, realizing the enormous problem that organized crime poses to the Russian economic and social well-being, the Russian government enacted numerous measures to fight Russian organized crime.<sup>159</sup> Authorities and public opinion attributed organized crime in Russia to criminals from Chechnya and other parts of the Caucasus.<sup>160</sup> In 1993, President Yeltsin ordered all undocumented aliens to be deported from the Russian capital.<sup>161</sup> The police in Moscow detained 14,000 people who did not have a residence permit, and deported 5000

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note 146, at 46 (indicating that in 1993 Russian police prevented 11 attempts to steal uranium from nuclear installations).

155. *Yeltsin's Decree "On Urgent Measures Aimed at Protecting the Population from Banditry and Other Manifestations of Organized Crime" ("Decree")*, June 17, 1994, BBC Worldwide Monitoring, available in LEXIS, News (Country and Region), BBCMIR File [hereinafter *Yeltsin's Decree*].

156. *Id.*

157. *Ugolovniy Kodeks Rossiyskoy Federatsii*, No. 63-FZ of June 13, 1996, as amended on June 25, 1998, *Sobr. Zakonod. RF*, 1996, No. 25, Item 2954. For English translation of the Criminal Code of the Russian Federation, see *CRIMINAL CODE OF THE RUSSIAN FEDERATION* (William E. Butler trans., Simmonds & Hill Pub. 2d ed. 1998) [hereinafter *CRIMINAL CODE*].

158. *Id.* arts. 209, 210, 30, 32, 33, 35, 174.

159. See generally LAYARD & PARKER, *supra* note 29, at 169 (noting that, unable to rely on courts, Russian politicians proposed draconian measures against criminal activities).

160. See Ken Fireman, *Rough Send-Off from Moscow: Caucasus Residents Forced Home*, *NEWSDAY*, Oct. 17, 1993, at 10 (quoting police inspector as saying that "[t]hese people who come from the Caucasus, well, what they do is just robbery . . . . [T]hey practically dictate the prices at our markets.").

161. See Malcolm Gray, *Crime and Punishment: Muscovites Applaud as the Police Get Tough*, *MACLEAN'S*, Oct. 25, 1993, at 30 (noting that illegal residents were forcibly put onto trains heading to Caucasus). Moscow mayor, Yuri Luzhkov, called on city residents to inform on neighbors who lived there without a residency permit. *Id.*

of them to provincial Russia or the Caucasus region.<sup>162</sup> Then, on June 14, 1994, Yeltsin issued the Presidential Decree *On Urgent Measures Aimed at Protecting the Population from Banditry and Other Manifestations of Organized Crime*, designed to address the problem of organized crime.<sup>163</sup> Aimed at defending the life and property interests of Russian citizens,<sup>164</sup> the Decree introduced a number of strict measures designed to curb criminal activities.<sup>165</sup> The Decree, among other powers, enabled the government to engage in expert examinations of suspected persons prior to instituting criminal proceedings, provided there is sufficient evidence of such individual's involvement in an organized criminal group and if the public procurator consents.<sup>166</sup> The results of these examinations may later be used as evidence in criminal cases.<sup>167</sup>

Similarly, the government can inspect an individual's or his

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162. See Helen Womack, *Minorities Bear Brunt of Police Crime Clampdown*, EUROPEAN NEWS PAGE, Oct. 18, 1993, available in 1993 WL 10887984 (noting that anyone without residency permit can only live in Moscow temporarily, after registering with police); *Moscow Cracks Down on Visitors from Former Soviet Republics*, BALTIMORE SUN, Nov. 16, 1993, at 12A (indicating that 10,000 people were deported from Moscow during two-week state of emergency period); see also Gray, *supra* note 161, at 30 (noting that many deportees were vendors who supplied fruits and vegetables on Moscow's markets, and deportations caused prices to go up dramatically); Fireman, *supra* note 160, at 10 (noting that police authorities claimed that this measure reduced crime by 16.5%).

163. Yeltsin's Decree, *supra* note 155.

164. See *id.* (indicating that Yeltsin introduced Decree "[f]or the purpose of protecting the life, health and property interests of citizens, ensuring the security of society and the state, and in compliance with the federal programme of the Russian Federation for stepping up the fight against crime.").

165. See *id.* (directing "that a system of urgent measures aimed at combating banditry and other serious crimes committed by organized groups of criminals be brought into force.").

166. *Id.* art. 1. This part of Article 1 states:

[W]here there is sufficient data on an individual's involvement in a gang or other organized group of criminals suspected of serious crimes, upon agreement with the procurator and prior to instituting criminal proceedings, expert examinations may be carried out, the results of which may be regarded as evidence in criminal cases of this category and preliminary checks may be authorized into the financial and economic activity and the property and financial situation not only of the individual in question but of his relatives or other persons who have resided with him during the past five years, as well as of physical and legal persons and public associations whose property, funds or name may have been controlled or used by the suspect.

*Id.*

167. See *id.* ("[i]n order to prepare and carry out investigative actions, stop and solve crimes, data from operational and investigative work, recognized by the appropriate procedure as evidence in criminal cases of this category, may be actively used.").

or her relatives' or co-residents' records of financial activities and transactions, without the obstacle of banking and commercial confidentiality requirements.<sup>168</sup> Extraordinary measures, such as denying bail or detaining suspects up to thirty days without formal charges, can be taken against individuals engaged in organized criminal groups.<sup>169</sup> The Decree gave governmental authorities power to inspect buildings and premises of enterprises, institutions, and organizations suspected of criminal activities, and to inspect their documentation.<sup>170</sup> The Decree also required executive authorities throughout the Russian Federation to draw a list of localities that required special attention, to assign additional law enforcement personnel in these localities, and to apportion funds in order to provide such personnel with material incentives.<sup>171</sup>

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168. *See id.* (noting that law enforcement agencies will disregard confidentiality laws in their fight against organized crime). This part of Article 1 states:

[B]anking or commercial confidentiality shall not prevent the procuracy, internal affairs or counterintelligence bodies or the tax police from obtaining, through a procedure established by them, information and documents on the financial and economic activity, deposits and account operations of physical and legal persons involved in bandit assaults or other serious crimes committed by organized criminal groups.

*Id.*

169. *See id.* (“[w]ritten undertaking not to leave the area, a personal guaranty or guaranty 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.”).

170. *See id.* (“[a]uthorized representatives of the bodies of internal affairs and counterintelligence have the right to inspect the buildings and premises of enterprises, institutions and organizations regardless of forms of ownership and to familiarize themselves with documents pertaining to their activity as well as to examine transport facilities, their drivers and passengers.”).

171. *Id.* art. 2. Article 2 states:

[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.

Russian civil rights activists criticized the Decree, arguing that it interfered with a number of rights and freedoms and violated the Constitution of the Russian Federation.<sup>172</sup> Dismissing the criticism of the Decree, the head of the Russian counterintelligence service claimed that while it was true that the measure restricted certain civil rights, it also protected other vital human rights critical to ninety-nine percent of the Russian population not engaged in criminal behavior.<sup>173</sup> Likewise, FBI Director Louis Freeh expressed his unconditional support for the Decree, expressing that the presidential measure harmoniously combined a respect for human rights with a necessity to protect the security of ordinary people.<sup>174</sup> In 1995, the head of the Chief Administration for Combating Organized Crime in Russia declared that efforts resulting from the Decree were successful and it had dealt a blow to Russian organized criminal groups.<sup>175</sup>

## 2. Criminal Code of the Russian Federation and Subsequent Measures

On May 24, 1996, the Russian State Duma<sup>176</sup> adopted the

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*Id.*

172. See Victor Shabalin et al., *The New Stage of the Fight Against Organized Crime in Russia* (visited Sept. 14, 1999) <<http://members.tripod.com/~orgcrime/rusnewstage.htm>> (on file with the *Fordham International Law Journal*) (noting that some members of Parliament spoke against Decree); see also KONST. RF (1994), art. 22(2) ("Arrest, detention, and keeping in custody shall be allowed only by an order of a court of law. No person may be detained for more than 48 hours without an order of a court of law."); Jankiewicz, *supra* note 106, at 254 (noting that Russian Federation Chairman on Human Rights stated that "implementation of the edict would be accompanied by arbitrary actions by law-enforcement departments—unjustified arrests, interference in citizens' private and economic activities, and a growth in corruption among officials.").

173. See LAYARD & PARKER, *supra* note 29, at 169 (explaining that other countries facing similar problems also resorted to drastic anti-crime measures).

174. See Asnis, *supra* note 69, at 312 (noting that Decree came into force from moment it was signed, as no Duma approval was necessary).

175. See Jankiewicz, *supra* note 106, at 256 (quoting Mikhail Yegorov, head of Chief Administration for Combating Organized Crime ("CACOC"), as stating that "26,500 mafiosi have passed through the hands of CACOC personnel"). CACOC reported that during the first year after the Decree came into effect, the Russian authorities detained 22,400 people and instituted 11,000 criminal cases. *Id.* At the same time, CACOC claimed that only 202 human rights complaints were filed during that time period. *Id.*

176. See KONST. RF (1994) art. 95 (stating that "[t]he Federal Assembly [Parliament of the Russian Federation] shall consist of two chambers—the Federation Council and the State Duma."); see also *id.* art. 94 (stating that The Federal Assembly—Parliament of the Russian Federation—shall be the supreme representative and legislative body of the Russian Federation.").

first post-Soviet Russian Criminal Code.<sup>177</sup> The Criminal Code contains many important provisions necessary to fight Russian organized crime.<sup>178</sup> Articles 209 and 210 of the Criminal Code, for example, specifically address the problem of banditism and organized crime.<sup>179</sup>

Article 209 of the Criminal Code provides that creation or leadership of a stable armed group for the purpose of assaulting individuals or organizations is punishable by a prison term of up to fifteen years, with possible confiscation of an individual's property.<sup>180</sup> Participation in such criminal groups may lead to imprisonment for the term of eight to fifteen years, with or without confiscation of property.<sup>181</sup> A harsher punishment of twelve to twenty years in prison is reserved for individuals who use their official positions to participate in such armed groups.<sup>182</sup>

While Article 209 of the Criminal Code concerns banditism and stable armed groups, Article 210 specifically addresses organized crime.<sup>183</sup> According to the Criminal Code, the creation of criminal organizations with the aim of committing grave or especially grave crimes, and leadership in such organizations or their subdivisions, is punishable by a prison term of seven to fifteen years, with possible confiscation of personal property.<sup>184</sup>

177. CRIMINAL CODE, *supra* note 157.

178. *Id.*

179. *See id.* arts. 209 ("Banditism"), 210 ("Organisation of Criminal Society (or Criminal Organisation)").

180. *Id.* art. 209(1). Article 209(1) states:

The creation of a stable armed group (or band) for the purpose of an attack upon citizens or organisations, and likewise the leadership of such a group (or band)—shall be punished by deprivation of freedom for a term of from ten up to fifteen years with or without confiscation of property.

*Id.*

181. *See id.* art. 209(2) ("Participation in a stable armed group (or band) or in the attacks committed by it—shall be punished by deprivation of freedom for a term of from eight up to fifteen years with or without confiscation of property.").

182. *See id.* 209(3) ("The acts provided for by paragraphs one or two of the present Article committed by a person with the use of his employment [official] position—shall be punished by deprivation of freedom for a term of from twelve up to twenty years with or without confiscation of property."). The Criminal Code does not define the term official position or the extent to which it has to be used for an individual to receive a harsher punishment. *Id.*

183. *Id.* art. 210.

184. *Id.* art. 210(1). Article 210(1) states:

The creation of a criminal society (or criminal organisation) in order to commit grave or especially grave crimes, and likewise the leadership of such a society (or organisation) or structural subdivisions therein, and also the creation

Participation in such criminal enterprises is likewise punishable by imprisonment for three to ten years with possible confiscation of property.<sup>185</sup> Individuals whose participation in organized criminal groups coincides with their duties as public officials are punished more severely: ten to twenty years in prison, with or without confiscation of property.<sup>186</sup> Nevertheless, while some experts believe that the anti-organized criminal provisions of the Criminal Code represent a good basis for fighting Russian organized crime,<sup>187</sup> others claim that the Criminal Code is somewhat ambiguous and fails to provide definitions for important terms, such as creation or participation.<sup>188</sup> In addition, certain provisions appear unduly restrictive.<sup>189</sup> Article 210, for example, only punishes suspects accused of committing grave or especially grave crimes, and it is not clear what punishment, if any, applies to organized criminal groups committing crimes that cannot be classified as grave or especially grave.<sup>190</sup>

Other articles in the Criminal Code, while not specifically addressing organized criminal groups, deal with other activities normally associated with criminal organizations.<sup>191</sup> Article 30 addresses crimes of conspiracy, facilitation, complicity, and prep-

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of an association of organisers, leaders, and other representatives of organised groups for the purpose of working out plans and conditions for the commission of grave or especially grave crimes—shall be punished by deprivation of freedom for a term of from seven up to fifteen years with or without confiscation of property.

*Id.*

185. *See id.* art. 210(2) (“Participation in a criminal society (or criminal organisation) or in an association of organisers, leaders, or other representatives of organised groups—shall be punished by deprivation of freedom for a term of from three up to ten years with or without confiscation of property.”).

186. *See id.* art. 210(3) (“The acts provided for by paragraphs one or two of the present Article committed by a person with the use of his employment position—shall be punished by deprivation of freedom for a term of from ten up to twenty years with or without confiscation of property.”).

187. *See* Frisby, *supra* note 26, at 40 (noting that Criminal Code presents strong legal foundation for future anti-crime campaigns).

188. *See* Cormaney, *supra* note 30, at 295 (indicating that narrowly defined requirement of “stable armed group” will significantly limit article’s application).

189. *Id.*

190. CRIMINAL CODE, *supra* note 157, art. 210.

191. *See id.* art. 30 (“Preparation for Crime and Attempted Crime”), 32 (“Concept of Conspiracy in Crime”), 33 (“Types of Conspirators in Crime”), 35 (“Commission of Crime by Group of Persons, by Group of Persons by Prior Collusion, by Organized Group, or by Criminal Society (or Criminal Organization)”).

aration for a crime.<sup>192</sup> Article 32 of the Criminal Code addresses and defines complicity and conspiracy—knowing and joint participation of two or more individuals in commission of a crime.<sup>193</sup> Article 33 concerns accomplices, such as organizers, instigators, and facilitators.<sup>194</sup> Finally, Article 35 addresses the commission of crimes by groups of people or through organized criminal groups or organizations.<sup>195</sup> It provides that, under cer-

192. *Id.* art. 30. Article 30 states:

1. Preparation for a crime shall be deemed to be the finding, manufacture, or outfitting of a person with the means or implements for commission of a crime, the finding of conspirators of a crime, collusion in the commission of a crime, or other intentional creation of conditions for the commission of a crime if in so doing the crime was not brought to the end under circumstances beyond the control of this person. 2. Criminal responsibility shall ensue only for the preparation for grave and especially grave crimes. 3. An attempted crime shall be deemed to be intentional actions (or failure to act) of a person directly aimed at the commission of a crime if in so doing the crime was not brought to an end under circumstances beyond the control of this person.

*Id.* Article 30 defines the crimes without providing for specific punishment. *Id.*

193. *See id.* art. 32 (“The intentional joint participation of two or more persons in the commission of an intentional crime shall be deemed to be conspiracy in a crime.”).

194. *Id.* art. 33. Article 33 states:

1. The organizer, the instigator, and the accessory shall, together, with the perpetrator, be deemed to be conspirators in a crime. 2. A person who has directly committed a crime or directly participated in the commission thereof jointly with other persons (co-perpetrators), and also a person who has committed a crime by means of the use of other persons who are not subject to criminal responsibility by virtue of age, non-imputability, or other circumstances provided for by the present Code, shall be deemed to be a perpetrator. 3. A person who has organized the commission of a crime or directed the perpetration thereof, and likewise a person who has created an organized group or criminal society (or criminal organisation) or directed them, shall be deemed to be an organizer. 4. A person who inclined another person to commit a crime by means of persuasion, bribe, threat, or other means shall be deemed to be an instigator. 5. A person who has facilitated the commission of a crime by advice, instructions, the granting of information, means, or implements for committing the crime or by the elimination of obstacles, and also a person who promised beforehand to conceal the criminal, means, or implements for commission of the crime, traces of the crime, or articles acquired by criminal means, and likewise a person who promised beforehand to acquire or sell such articles, shall be deemed to be an accessory.

*Id.*

195. *Id.* art. 35. Article 35 states:

1. A crime shall be deemed to be committed by a group of persons if two or more perpetrators without prior collusion jointly participated in the commission thereof. 2. A crime shall be deemed to be committed by a group of persons by prior collusion if the persons who agreed beforehand to the joint commission of the crime participated therein. 3. A crime shall be deemed to be committed by an organised group if it was committed by a stable group of



tain circumstances, organizers and non-participating members of a criminal enterprise are liable for the crimes committed by other members of the group.<sup>196</sup>

Article 174 of the Criminal Code concerns money and property laundering.<sup>197</sup> It provides that financial transactions and operations involving illegally acquired money or other kinds of property, as well as use of such finances for entrepreneurial or economic activity, is punishable by various fines and terms of imprisonment.<sup>198</sup> Harsher punishments are reserved for the commission of such crimes by groups of individuals, for people con-

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persons who combined beforehand to commit one or several crimes. 4. A crime shall be deemed to be committed by a criminal society (or criminal organisation) if it was committed by a cohesive organised group (or organisation) created for the commission of grave or especially grave crimes or by the combining of organised groups created for the same purposes. 5. A person who has created an organised group or criminal society (or criminal organisation) or directed them shall be subject to criminal responsibility for the organisation thereof and direction thereof in the instances provide for by respective Articles of the Special Part of the present Code, and also for all the crimes committed by the organized group (or criminal organisation) if they were encompassed by his intent. Other participants of an organised group or criminal society (or criminal organisation) shall bear criminal responsibility for participation therein in the instances provided for by the respective Articles of the Special Part of the present Code, and also for crimes in the participation or commission of which they participated. 6. The creation of an organised group in instances not provided for by the Articles of the Special Part of the present Code shall entail criminal responsibility for the preparation of those crimes for the commission of which it was created. 7. The commission of a crime by a group of persons, by a group of persons by prior collusion, by an organised group, or by a criminal society (or criminal organisation) shall entail a more severe punishment on the basis of and within the limits provided for by the present Code.

*Id.*

196. *Id.*

197. *See id.* art. 174 (referring to "Legalisation (or Laundering) of Monetary Means or Other Property Acquired by Illegal Means").

198. *Id.* art. 174(1). Article 174(1) states:

The performance of financial operations and other transactions with monetary means or other property known to have been acquired by illegal means, and likewise the use of the said means or other property in order to effectuate entrepreneurial or other economic activity—shall be punished by a fine in the amount of from five hundred up to seven hundred minimum amounts of payment for labour or in the amount of the earnings or other revenue of the convicted person for a term of from five up to seven months, or by deprivation of freedom for a term of up to four years with or without a fine in the amount of up to one hundred minimum amounts of payment for labour or in the amount of the earnings or other revenue of the convicted person for a term of up to one month.

*Id.*

victed of multiple violations, for conspiratorial acts, and for persons who committed such violations while performing their official duties.<sup>199</sup>

Two articles of the Criminal Code specifically address international crimes.<sup>200</sup> Article 13 provides that citizens of the Russian Federation who committed a crime in the territory of another nation, cannot be extradited<sup>201</sup> to that jurisdiction.<sup>202</sup> At the same time, stateless persons and citizens of other countries who committed a crime abroad and currently claim their residence in the Russian Federation, may be extradited to a non-Russian jurisdiction in accordance with treaty practice.<sup>203</sup> Article 12 also addresses the possibility of application of the Criminal Code to people who commit their crimes outside the territory of the Russian Federation and have not already been prosecuted for such crimes.<sup>204</sup>

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199. *See id.* art. 174(2) (“The same acts committed: (a) by a group of persons by prior collusion; (b) repeatedly; (c) by a person with the use of his employment position—shall be punished by deprivation of freedom for a term of from four up to eight years with or without confiscation of property.”).

200. *See id.* art. 12 (“Operation of Criminal Law With Respect to Persons Who Committed Crime Beyond Limits of Russian Federation”), 13 (“Extradition of Persons Who Have Committed Crime”).

201. *See* Warmund, *supra* note 134, at 2380 (defining extradition as “the surrender of a criminal or accused criminal by one sovereign to another.”). Extradition usually occurs in accordance with a bilateral treaty. *Id.* at 2380-81. Most nations, however, have laws that prohibit the extradition of their citizens. *Id.* at 2382.

202. *See* CRIMINAL CODE, *supra* note 157, art. 13(1) (“Citizens of the Russian Federation who have committed a crime on the territory of a foreign State shall not be subject to extradition to this State.”).

203. *Id.* art. 13(2). Article 13(2) states:

Foreign citizens and stateless persons who have committed a crime beyond the limits of the Russian Federation and are situated in the territory of the Russian Federation may be extradited to the foreign State for bringing to criminal responsibility or serving punishment in accordance with an international treaty of the Russian Federation.

*Id.*

204. *Id.* art. 12. Article 12 states:

1. Citizens of the Russian Federation and stateless persons permanently residing in the Russian Federation who have committed a crime beyond the limits of the Russian Federation shall be subject to criminal responsibility according to the present Code if the act committed by them is deemed to be a crime in the State on whose territory it was committed and if these persons were not convicted in the foreign State. In the event of the conviction of the said persons the punishment may not exceed upper limit of the sanction provided for by the law of the foreign State on whose territory the crime was committed. 2. Military servicemen of military units of the Russian Federation stationed beyond the limits of the Russian Federation shall, for crimes committed on the

To supplement the Criminal Code, President Yeltsin signed into law the new Criminal Correction Code,<sup>205</sup> which is meant to regulate the conditions under which convicted criminals serve out their sentences.<sup>206</sup> In addition, on May 14, 1997, the Russian Duma passed the first witness protection law in Russian history.<sup>207</sup> Practitioners believe that the absence of personal security of witnesses is a major barrier in criminal investigations,<sup>208</sup> and the new witness protection law tried to solve this problem by guaranteeing anonymity and security to witnesses in criminal investigations.<sup>209</sup> President Yeltsin, however, using the powers

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territory of the foreign State, bear criminal responsibility according to the present Code unless provided otherwise by international treaty of the Russian Federation. 3. Foreign citizens and stateless persons who do not reside permanently in the Russian Federation and who have committed a crime beyond the limits of the Russian Federation shall be subject to criminal responsibility according to the present Code in instances if the crime was directed against the interests of the Russian Federation and, in instances provided for by an international treaty of the Russian Federation, if they were not convicted in the foreign State and are brought to criminal responsibility on the territory of the Russian Federation.

*Id.*

205. *Ugolovno-Iсполnitel'niy Kodeks Rossiyskoy Federatsii* (Correction Code), *Sobr. Zakonod. RF*, 1996, No. 2, Item 198.

206. *Id.*; see Stanislaw Pomorski, *Reflections on the First Criminal Code of Post-Communist Russia*, 46 *AM. J. COMP. L.* 375, 375 n.4 (1998) (noting that new Correction Code was signed on January 8, 1997).

207. See *Postanovlenie Gosudarstvennoy Dumi Federal'nogo Sobrania Rossiyskoy Federatsii O Federal'nom Zakone "O Gosudarstvennoy Zashchite Poterpevshich, Svideteley i Drugich Lits, Sodeystvuyuschich Ugolovnomu Sudoproizvodstvu"* (Decision by the State Duma of the Russian Federation on Federal Law On State Protection of Victims, Witnesses and Other Persons Assisting in Criminal Investigations), *Sobr. Zakonod. RF*, 1997, No. 21, Item 2433 (stating that State Duma of Russian Federation decides to adopt this law); see also *Postanovlenie Soveta Federatsii Federal'nogo Sobrania Rossiyskoy Federatsii O Federal'nom Zakone "O Gosudarstvennoy Zashchite Poterpevshich, Svideteley i Drugich Lits, Sodeystvuyuschich Ugolovnomu Sudoproizvodstvu"* (Decision by the Federation Council of the Russian Federation on Federal Law On State Protection of Victims, Witnesses and Other Persons Assisting in Criminal Investigations), *Sobr. Zakonod. RF*, 1997, No. 25, Item 2817 (stating that Federation Council of Russian Federation approves adoption of this law).

208. Frisby, *supra* note 26, at 40.

209. See *Proekt, Federal'niy Zakon o Gosudarstvennoy Zashchite Poterpevshich, Svideteley I Drugich Lits, Sodeystvuyuschich Ugolovnomu Sudoproizvodstvu*, art. 5 (Draft of the Federal Law On State Protection of Victims, Witnesses and Other Persons Assisting in Criminal Investigations), available in Information Channel of the State Duma of the Russian Federation (visited Sept. 17, 1999) <[www.akdi.ru/gd/proekt/079202GD.HTM](http://www.akdi.ru/gd/proekt/079202GD.HTM)> (on file with the *Fordham International Law Journal*) (stating that measures of protection applied to protected persons will include confidentiality of information provided by such persons, personal protection, provision of firearms to protected persons, relocation, replacement of personal identification documents, and change of employment).

granted to him by Article 107 of the Russian Constitution,<sup>210</sup> rejected this law.<sup>211</sup> Commentators note that despite the new laws and initiatives, enforcement of these provisions against Russian organized crime remains inadequate.<sup>212</sup> On July 13, 1997, it was reported by news agencies that 100,000 people, belonging to 9000 organized criminal groups, were under surveillance by Russian law enforcement authorities, but could not be arrested due to the lack of sufficient evidence necessary for their indictment.<sup>213</sup>

### C. *Mutual Legal Assistance Treaties*

MLATs are legal mechanisms that have often been used by U.S. law enforcement agencies in the last few decades to address the problem of transnational organized crime.<sup>214</sup> U.S. authorities have successfully used joint prosecution and legal cooperation with Israel to avoid the narrow scope of Israel's non-extradition law.<sup>215</sup> The United States and Italy employed the MLAT between the two nations to jointly prosecute major criminal cases dealing with international illegal activities.<sup>216</sup> The Treaty on Mu-

210. KONST. RF (1994), art. 107. Article 107 states:

1. An adopted federal law shall be sent to the President of the Russian Federation for signing and publication within five days.

2. The President of the Russian Federation shall, within fourteen days, sign a federal law and publish it.

3. If the President rejects a federal law within fourteen days since it was sent to him, the State Duma and the Federation Council shall again consider the law in accordance with the procedure established by the Constitution of the Russian Federation. If, during the second hearings, the federal law shall be approved in its earlier draft by a majority of not less than two thirds of the total number of deputies of the Federation Council and the State Duma, it shall be signed by the President of the Russian Federation within seven days and published.

*Id.*

211. See *Zakonoproekti, Otklonennye Prezidentom RF* (Laws Rejected by the President of RF), available in Information Channel of the State Duma of the Russian (visited Sept. 17, 1999) <[www.akdi.ru/gd/proekt/079202GD.HTM](http://www.akdi.ru/gd/proekt/079202GD.HTM)> (on file with the *Fordham International Law Journal*) (noting that President Yeltsin rejected this law on June 27, 1997).

212. Frisby, *supra* note 26, at 40.

213. *Id.*

214. See Knapp, *supra* note 25, at 410-11 (comparing MLATs with preceding mechanisms of legal cooperation).

215. Abraham Abramovsky, *Partners Against Crime: Joint Prosecutions of Israeli Organized Crime Figures By U.S. and Israeli Authorities*, 19 *FORDHAM INT'L L. J.* 1903, 1903 (1996)

216. See Jankiewicz, *supra* note 106, at 248-49 (discussing "Pizza Connection" case and "Operation Green Ice").

tual Legal Assistance in Criminal Matters between Hungary and the United States<sup>217</sup> (“Hungarian MLAT”) also provides for obligatory assistance designed to facilitate prosecution of members of transnational organized crime.<sup>218</sup>

### 1. Definition and Legal Framework

Until a few decades ago, domestic authorities generally performed criminal law enforcement.<sup>219</sup> The main reason for this situation was that the handling of international investigations was, and still is, quite complicated, and cultural differences—such as differing languages, manners, and customs—often make it even more difficult.<sup>220</sup> To complicate matters, the laws of certain countries prohibit the extradition of their nationals.<sup>221</sup>

One solution that has proven practical in partially eliminating problems of sovereignty and in identifying and creating legal mechanisms to facilitate international cooperation is an MLAT.<sup>222</sup> An MLAT is a bilateral agreement between two countries in which they agree to provide each other with assistance in certain prosecutorial procedures, such as obtaining records, serving documents, producing persons and physical evidence, seizing and immobilizing assets, and executing search warrants.<sup>223</sup> These agreements are binding and may, similarly to

217. Treaty on Mutual Legal Assistance in Criminal Matters, Dec. 1, 1994, U.S.-Hung., No. KAV 4385, Senate Treaty Doc. No. 104-20, Exec. Rep. No. 104-25 [hereinafter Hungarian MLAT].

218. *Id.*

219. See Vassalo, *supra* note 54, at 181-82 (noting that jurisdiction and sovereignty justified local approach). Classic international law dictated that one state could not exercise its powers on the territory of another state. *Id.*

220. See Abramovsky, *supra* note 215, at 1903-04 (noting that evidence necessary for prosecution of transnational crimes is spread across national boundaries).

221. *Id.* at 1904.

222. See generally Knapp, *supra* note 25, at 409-11 (stating that cooperation under MLAT is more efficient than letters of rogatory). Letters of rogatory represent a traditional way of requesting production of evidence from another nation. *Id.* at 409. They are submitted through diplomatic channels, “from a judge in one country to a judge in another country to perform a specific act, . . . [which] might be ordering a witness to testify, issuing a search warrant, or compelling the production of documents.” *Id.* Practitioners believe that letters of rogatory are inferior to MLATs. *Id.* at 409-11. Letters of rogatory are time consuming, are subject to personal interpretation by lawyers of a requested state, may not be available for a particular offense, cannot often overcome local secrecy laws on producing documents, and sometimes cannot be used in grand jury proceedings. *Id.* at 409-10.

223. See Abramovsky, *supra* note 128, at 207 (stating that MLATs are most comprehensive of all evidence-gathering processes).

criminal investigations, cover assistance in related civil or administrative proceedings,<sup>224</sup> and establish a central authority in each state to oversee compliance with its terms.<sup>225</sup>

MLATs first identify specific areas in which there is a need for bilateral cooperation and then create legal frameworks to facilitate the exchange of relevant evidence and information.<sup>226</sup> The state from which mutual legal assistance is requested usually does not conduct a criminal procedure itself—it only supports the procedure created and conducted by the requesting state.<sup>227</sup> As a result, MLATs lead its signatories to surrender a certain degree of sovereignty and to allow some foreign intrusion into traditionally domestic areas of crime control.<sup>228</sup>

The United States signed its first major MLAT in 1973 with Switzerland, entitled the Treaty on Mutual Assistance in Criminal Matters<sup>229</sup> (“U.S.-Swiss MLAT”). This treaty entered into

224. Knapp, *supra* note 25, at 406.

225. See Abramovsky, *supra* note 128, at 207-08 (noting that in United States this authority is vested in U.S. Attorney General).

226. See Vassalo, *supra* note 54, at 188-89 (noting that requested evidence is provided more quickly because all requesting state has to do is contact representative of requested state specified in the treaty). *But see New MLAT Treaties Increase DOJ's Reach*, 4 No. 7 DOJ ALERT 7, 9 (1994) (noting that success of MLAT depends on foreign government's willingness to implement treaty's provisions).

227. See Judith Natterer, *Switzerland's International Mutual Legal Assistance in Criminal Matters*, Transparency International Working Paper (visited Aug. 3, 1999) <<http://www.transparency.de/documents/work-papers/natterer.html>> (on file with the *Fordham International Law Journal*) (noting that Switzerland, which performs its own administration of criminal justice on behalf of requesting state, is exception to this principle). Swiss legal authorities exercise their own penal authority over subjects of transnational investigations. *Id.* Transparency International is a non-governmental organization, the declared goal of which is to increase government accountability and curb international and national corruption. *Id.*

228. See Vassalo, *supra* note 54, at 188 (stating that provisions in MLAT between United States and Switzerland take precedence over all national laws).

229. Treaty on Mutual Assistance in Criminal Matters, May 25, 1973, U.S.-Switz., 27 U.S.T. 2019 [hereinafter Swiss MLAT]; see also *Russian Corruption and Money Laundering: Hearings Before the House Banking and Financial Services Comm.*, 106th Cong. (1999), available in 1999 WL 27594670, exhibit B (testimony of James K. Robinson, Assistant Attorney General, Criminal Division, U.S. Department of Justice) (noting that United States currently has MLATs in force with Antigua-Barbuda, Argentina, Austria, Bahamas, Canada, Cayman Islands, Grenada, Hungary, Israel, Italy, Jamaica, Lithuania, Mexico, Morocco, Netherlands, Panama, Philippines, Poland, St. Vincent, South Korea, Spain, Switzerland, Thailand, Turkey, United Kingdom, and Uruguay). MLATs with Australia, Barbados, Belgium, Brazil, Colombia, Czech Republic, Dominican Republic, Egypt, Estonia, France, Greece, Hong Kong, Latvia, Luxembourg, Nigeria, Romania, Russia, St. Kitts-Nevis, St. Lucia, South Africa, Trinidad-Tobago, Ukraine, and Venezuela have been signed but are not yet in force. *Id.*

force in 1977<sup>230</sup> and created an obligation on both states to assist each other in the fight against transnational crime.<sup>231</sup> The purpose of the treaty was to give the United States access to evidence usually protected by the Swiss banking secrecy laws.<sup>232</sup> The enactment of the U.S.-Swiss MLAT helped U.S. authorities to gather evidence that led to successful prosecutions of several cases in the United States.<sup>233</sup>

## 2. Israel

Under the Offences Committed Abroad Law of 1978,<sup>234</sup> Israeli nationals cannot be extradited from Israel for crimes committed abroad.<sup>235</sup> The Israeli government adopted this law in order to offset the danger of Israeli citizens suffering from anti-Semitism in non-Israeli courts,<sup>236</sup> but the law also produced the unintended effect of turning Israel into a safe haven for members of organized crime who viewed the country as a desirable destination after commission of crimes outside of Israel.<sup>237</sup> A three-year-old case, however, provides an example of how law enforcement authorities from the United States and Israel can co-

230. Swiss MLAT, *supra* note 229.

231. *See id.* art. 1 ("Obligation to Furnish Assistance"). Article 1 of the treaty declares that "[t]he Contracting Parties undertake to afford each other, in accordance with provisions of this Treaty, mutual assistance . . ." *Id.*

232. *See Vassalo, supra* note 54, at 189 (noting that Switzerland's strict bank secrecy laws facilitated hiding criminal funds).

233. *See id.* at 190 (providing as example case of *United States v. Sturman*, 951 F.2d 1466 (6th Cir. 1991), in which suspects were accused of tax evasion, filing false income tax returns, and distribution of pornography).

234. Offences Committed Abroad (Amendment of Enactments) Law, 1973, 32 L.S.I. 63, (1978).

235. *Id.* art. 2, 3. The amendment to this law states that:

[i]n the Extradition Law . . . (1) the following section shall be inserted after section 1: 1A. An Israeli national shall not be extradited save for an offence [sic] committed before he became an Israeli national . . . 3. Section 1 shall apply also to an offence [sic] committed by a person before the coming into force of this Law provided that a request for his extradition has been made and has been rejected by reason only of his Israeli nationality.

*Id.*

236. Abramovsky, *supra* note 215, at 1908.

237. *See id.* (noting that Israel is not usually associated with organized crime). With time, however, Israeli organized crime grew and expanded into the United States. *Id.* at 1909-10. It is now active in such U.S. cities, as Boston, Los Angeles, Miami, and New York. *Id.* at 1909. Due to the large Jewish immigration from the Soviet Union, and later Russia, to Israel, Russian and Israeli organized criminal groups became "natural partners." *Id.* at 1910.

operate in order to combat and bring to justice members of international criminal organizations.<sup>238</sup>

In 1989, two Israeli organized crime members, Israel Mizrahi and Joseph Reisch, were hired by the Italian Mafia to kill Michael Markowitz, a Russian mobster residing in New York.<sup>239</sup> The murder took place on May 3, 1989,<sup>240</sup> after which the criminals were able to escape the United States, and later appeared in Israel.<sup>241</sup> There, Israeli and U.S. prosecutors began the process that one international criminal law expert believes to be the largest joint prosecution effort against Israeli organized crime figures for crimes committed abroad.<sup>242</sup> The same expert stated that the cooperation in this case set new standards of international cooperation directed at eliminating transnational organized crime.<sup>243</sup>

Israeli prosecutors prepared and conducted the actual prosecution of the case,<sup>244</sup> but law enforcement authorities in the United States gathered most of the evidence.<sup>245</sup> U.S. prosecutors also served as expert witnesses, testifying about the U.S. law

238. *Id.* at 1903.

239. *Israel v. Mizrahi and Reisch*, Tel Aviv-Yafo Dist. Ct., Felony File 503/93 (Mizrahi), 200/94 (Reisch) (Israel). See Abramovsky, *supra* note 215, at 1903-05 (noting that charges against defendants were technically separate, but they were tried together).

240. Abramovsky, *supra* note 215, at 1906. See Robert E. Kessler, *2 Fugitives Arrested; Caught in Israel, They're Wanted by Feds on LI*, *NEWSDAY*, Nov. 30, 1993, at 31 (noting that Michael Markowitz was a key figure in gasoline bootlegging scheme, but later became government informant). Assistant U.S. Attorney Cecilia Gardner said that Israel Mizrahi killed Markowitz "to prevent the communication . . . to a federal law enforcement officer of information related to the commission and possible commission of federal offenses." Kessler, *supra*.

241. See Kessler, *supra* note 240, at 31 (noting that Mizrahi was also charged with murder of member of heroin smuggling ring).

242. See Abramovsky, *supra* note 215, at 1910-11 (positing that, interestingly, Israeli-U.S. cooperation in this case started before murder of Markowitz, as law enforcement agencies of both countries investigated activities of Israeli and Russian criminal groups).

243. See *id.* at 1903 (noting that almost seven years passed between murder and actual prosecution).

244. See *id.* at 1911 (stating that Israeli prosecutors conduct examination of witnesses).

245. See *id.* (noting that United States also provided star witnesses in this case, who were former gangsters enrolled in Federal Witness Protection Program); see also *Israelis Arrest Accused Tax Thief, Mob Murderer*, 30 *U.S. OIL WEEK*, No. 48, Dec. 6, 1993, available in 1993 WL 2727357 (noting that while Israel has no extradition treaty, suspects could be tried in Israel with assistance of U.S. authorities).



enforcement system and criminal procedure.<sup>246</sup> Ironically, both defendants were acquitted on the murder charges, but the trial and cooperation of the U.S. and Israeli authorities served as a good model for international criminal law enforcement cooperation.<sup>247</sup>

On the opposite side of the Atlantic, U.S. law enforcement authorities received the help of their Israeli colleagues in prosecuting the owner of a limousine agency in Brookline, Massachusetts, whose main activity concerned drug trafficking.<sup>248</sup> The criminal enterprise consisted of fourteen Israelis living in different cities in the United States and in Europe.<sup>249</sup> Israeli police aided U.S. efforts by monitoring wiretaps and providing information about the suspects' criminal past in Israel.<sup>250</sup>

Significantly, all of these prosecutions occurred in the absence of an official MLAT between Israel and the United States.<sup>251</sup> On January 26, 1998, however, the new Treaty between the United States and Israel on Mutual Legal Assistance in Criminal Matters<sup>252</sup> was signed in Jerusalem.<sup>253</sup> Practitioners believe

246. See Abramovsky, *supra* note 215, at 1911 (noting that U.S. prosecutors assisting in this case were Eric Seidel and Cecilia Gardner).

247. See *id.* at 1917 (stating that court reiterated that substantial evidence pointed to defendants' guilt, and they were not convicted due to reasonable doubt alone).

248. See *id.* at 1917-18 (elaborating that U.S. authorities actually shoued US\$35,000 in forfeited money with Israeli National Police); see also Frank Scott, "The Israeli Connection": Drug Bust Brings Profit, JEWISH ADVOC., July 6, 1995, at 1 (noting that special treaty called for Israel to use money "to promote law enforcement efforts to control and eliminate drug trafficking and other narcotics-related criminal activities").

249. See Abramovsky, *supra* note 215, at 1917 (noting that criminal group allegedly cooperated with Colombian drug traffickers); see also *US Shares Proceeds from Drug Bust with Israel; Police Forces Catch Israeli-led Gang*, JERUSALEM POST, June 29, 1995, at 12 (stating that it is believed to be first time that confiscated assets were shared between two governments).

250. See Abramovsky, *supra* note 215, at 1917-18 (noting that one member of criminal enterprises was apprehended and convicted in Israel). U.S. prosecutors did not participate in this particular trial. *Id.*; see also Scott, *supra* note 248, at 1 (noting that Israeli National Police provided instant translations of Hebrew conversations recorded on wiretaps).

251. See *US, Israel Sign Crime-Fighting Pact*, AGENCE FRANCE-PRESSE, Jan. 26, 1998, available in 1998 WL 2208440 (noting that MLAT between United States and Israel was signed on January 26, 1998).

252. Treaty on Mutual Legal Assistance in Criminal Matters, Jan. 26, 1998, U.S.-Isr., No. KAV 5204, Senate Treaty Doc. No. 105-40.

253. See *US, Israel Sign Crime-Fighting Pact*, *supra* note 251 (noting that MLAT between Israel and United States had been negotiated since 1994); see also *Extradition, Mutual Legal Assistance, and Prisoner Transfer Treaties: Hearings Before the Senate Comm. on Foreign Relations*, 105th Cong. 11-13 (1998) (statement of Mark M. Richard, Deputy As-

that the above cases clearly show how joint prosecutions and transnational legal enforcement cooperation are effective in curbing the activities of international criminal enterprises.<sup>254</sup>

### 3. Italy

In 1982, the United States and Italy signed a Treaty of Mutual Legal Assistance in Criminal Matters<sup>255</sup> ("Italian MLAT"). The treaty primarily focuses upon Italian organized crime.<sup>256</sup> The Italian MLAT requires both parties to provide assistance in criminal investigations and proceedings.<sup>257</sup> It requires all agencies involved in criminal investigations to file their requests for assistance with the Attorney General of the United States.<sup>258</sup>

Practitioners note that the Italian MLAT helped in the prosecution of *United States v. Badalamenti*,<sup>259</sup> the notorious *Pizza Connection* case, in which defendants used pizza parlors as covers for criminal activities.<sup>260</sup> In this case, the government accused twenty defendants of smuggling US\$1.6 billion of heroin into

sistant Attorney General, Dep't of Justice) (stating that MLATs are effective tools in fight against internationalization of crime).

254. See generally Abramovsky, *supra* note 215, at 1903 (stating that "[t]he saga of [Mizrahi's and Reisch's] trial illustrates the increasingly intricate world of international organized crime, and provides an example of law enforcement professionals from differing legal systems combining their efforts against members of international criminal enterprises.").

255. Treaty of Mutual Legal Assistance in Criminal Matters, Nov. 9, 1982, U.S.-Italy, 24 I.L.M. 1536 [hereinafter Italian MLAT].

256. See Vassalo, *supra* note 54, at 191 (noting that purpose of Italian MLAT was different from that of Swiss MLAT). While the Swiss MLAT concentrated on bank secrecy laws, the Italian MLAT was designed to fight organized crime. *Id.*

257. See Italian MLAT, *supra* note 255, art. 1 ("The Contracting Parties undertake to afford each other, upon request and in accordance with the provisions of this Treaty, mutual assistance in criminal investigations and proceedings.").

258. See *id.* art. 2 ("A request under this Treaty shall be made by a Central Authority for each Contracting Party. The Central Authorities shall communicate directly with each other to implement the provisions of this Treaty.").

259. *United States v. Badalamenti*, No. 84 Cr. 236 (PNL) (S.D.N.Y. 1987); *United States v. Badalamenti*, 626 F. Supp. 658, 660 (S.D.N.Y. 1986); *United States v. Badalamenti*, 626 F. Supp. 655, 658 (S.D.N.Y. 1985), *United States v. Badalamenti*, 663 F. Supp. 1539 (1987).

260. See Richard A. Martin, *Problems in International Law Enforcement*, 14 *FORDHAM INT'L L.J.* 519, 522 (1991) (noting that law enforcement authorities from Brazil, Canada, Germany, Italy, Spain, Switzerland, and United States worked on this case for almost one year); see also "Pizza Connection" Defendant Found Slain on N.Y. Street; Drug Trial Thrown into Confusion, *WASH. POST*, Dec. 3, 1986, at A5 (noting that defendants set up pizza parlors in Midwest and Northeast of United States).

the United States.<sup>261</sup> Gaetano Badalamenti, one of the masterminds of the drug ring, and his associates in Italy purchased opium from Pakistan and Afghanistan, transformed it into heroin, and then transferred it to the United States.<sup>262</sup> In the trial, which lasted seventeen months, U.S. prosecutors employed the Racketeer Influenced and Corrupt Organizations Act<sup>263</sup> to fight the Italian Mafia.<sup>264</sup> The Italian MLAT even allowed for the live testimony of two Italian citizens in the United States.<sup>265</sup> The trial involved 15,000 exhibits and 41,000 pages of testimony of 250 witnesses.<sup>266</sup> On March 3, 1987, the jury convicted eighteen of the remaining nineteen defendants of operating a narcotics ring.<sup>267</sup>

Another big case directly affected by the Italian MLAT was *Operation Green Ice*<sup>268</sup>—which some experts believe to be the most sophisticated international money laundering case ever undertaken by law enforcement officials—that took place in September 1992.<sup>269</sup> The case was intended to break the international

261. See “*Pizza Connection*” *Trial Drags On*, CHICAGO TRIB., Oct. 9, 1986, at 30 (stating that full trial was translated for defendants who did not speak English). Two of the 22 original defendants in the case pleaded guilty to lesser charges. *Id.*

262. See *Extra Cheese; Busting a Pizza Connection*, TIME, Apr. 23, 1984, at 41 (noting that Pietro Alfano, residing in United States, was second mastermind of drug ring); see also *Defendant Found Slain*, *supra* note 260, at A5 (noting that Gaetano Mazzara, missing defendant in drug trial, was killed in New York); “*Pizza Connection*” *Defendant Shot in City*, NEWSDAY, Feb. 12, 1987, at 17 (stating that another defendant in this case was wounded by unidentified gunmen).

263. 18 U.S.C. § 1961 (1970).

264. See Jankiewicz, *supra* note 106, at 248 (noting that these efforts led to arrest of 366 suspects and 338 convictions in Italy). Louis Freeh, then U.S. Attorney and now the Director of the FBI, participated in that case. *Id.*

265. See Vassalo, *supra* note 54, at 191 (noting that Italian MLAT facilitated transfer of foreign witnesses). These two Italian nationals were Tommaso Buscetta and Salvatore Contorno. *Id.*

266. See Margot Hornblower, *18 Guilty in “Pizza Connection” Trial; Case Called Major Victory in U.S. Assault on Organized Crime*, WASH. POST, Mar. 3, 1987, at A3 (quoting U.S. Attorney Rudolph W. Giuliani as saying “[i]t is [sic] tremendous victory in the effort to crush the Mafia. Five years ago nobody would have thought it possible to convict the head of the Sicilian Mafia and the head of a major part of an American Mafia family.”).

267. See “*Pizza Connection*” *Convictions Seen as Crushing Blow to Mafia*, SEATTLE TIMES, Mar. 3, 1987, at A2 (noting that judge excused one juror from case after juror’s relative was threatened).

268. See Jankiewicz, *supra* note 106, at 249 (describing *Operation Green Ice*).

269. See Michael Hedges, *Operation Green Ice Began with Fake Leather Shop*, WASH. TIMES, Sept. 29, 1992, at A3 (noting that operation started when law enforcement authorities opened phony leather-goods store, which offered to launder money for criminals).

money laundering conspiracy orchestrated by South American drug cartels and the Italian Mafia, and it involved undercover U.S. and Italian agents posing as bankers and criminals trying to penetrate criminal organizations.<sup>270</sup> As the result of the operation, law enforcement authorities arrested members of Italian and Colombian criminal groups.<sup>271</sup> The two-year long international investigation led to 167 arrests and US\$54 million of seized cash and assets.<sup>272</sup> The Italian MLAT let the U.S. Drug Enforcement Administration agents testify in the United States for the prosecution that was taking place in Italy.<sup>273</sup>

#### 4. Hungary

The United States and the Republic of Hungary signed the Hungarian MLAT in Budapest on December 1, 1994.<sup>274</sup> The drafters designed the Hungarian MLAT, like all other MLATs, to facilitate prosecution of a wide variety of criminal activities.<sup>275</sup> The provisions of the Hungarian MLAT are similar to those of other MLATs signed by the United States.<sup>276</sup>

The scope of obligations of the parties under the Hungarian MLAT includes a non-exhaustive list of the major types of assistance, including taking testimony of persons, serving documents, locating or identifying persons, transferring persons in custody, executing requests for searches and seizures, and assist-

270. Jankiewicz, *supra* note 106, at 249.

271. Hedges, *supra* note 269, at A3.

272. *See Operation Green Ice Score: Good Guys—167, Cartels—0, 2 TACTICAL TECHNOLOGY* No. 21, Oct. 14, 1992, available in 1992 WL 2308969 (noting that operation resulted in arrests of top-ranking Colombian cartel managers in Costa Rica, Italy, Spain, and United States). According to one official, "Operation Green Ice and the other initiatives have resulted in the global disruption of the Cali and Medellin cartels, the most powerful drug trafficking organizations in the history of the world." *Id.*

273. *See* Jankiewicz, *supra* note 106, at 249 (noting that Operation Green Ice and Pizza Connection are examples of how cooperation can be used to combat organized crime).

274. Hungarian MLAT, *supra* note 217. This treaty was ratified on March 18, 1997. *Id.*

275. *See id.*, Letter of Transmittal ("The Treaty should be an effective tool to assist in the prosecution of a wide variety of modern criminals, including members of drug cartels, 'white-collar' criminals, and terrorists.").

276. *See id.* ("In recent years, similar bilateral treaties have been entered into force with Argentina, the Bahamas, Canada, Italy, Jamaica, Mexico, Morocco, the Netherlands, Spain, Switzerland, Thailand, Turkey, the United Kingdom (concerning the Cayman Islands), and Panama.").

ing in asset proceedings.<sup>277</sup> The Hungarian MLAT specifically states that it is intended solely for mutual legal assistance between the United States and Hungary.<sup>278</sup> The Hungarian MLAT does not have a dual criminality requirement, meaning that assistance in prosecuting a specific criminal act should be provided without regard to whether such offense would constitute a crime under the laws of the Requested State.<sup>279</sup>

The Hungarian MLAT provides for establishment of central authorities, which are the Attorney General in the United States, Hungary's Minister of Justice and the Chief Public Prosecutor, or people designated by them, for making and receiving requests.<sup>280</sup> Article 3 of the Hungarian MLAT provides circumstances when requests for assistance may be denied, and those situations include the exceptions for political offenses, offenses under military law, and requests that may prejudice the sovereignty or security of the Requested State.<sup>281</sup> The Hungarian

277. *Id.* art. 1(2). Article 1(2) states:

Assistance shall include: (a) taking the testimony or statements of persons; (b) providing documents, records, and articles of evidence; (c) serving documents; (d) locating or identifying persons or items; (e) transferring persons in custody for testimony or other purposes; (f) executing requests for searches and seizures; (g) immobilizing assets; (h) assisting in proceedings related to forfeiture, restitution, and collection of fines; and (i) any other form of assistance not prohibited by the laws of the Requested State.

*Id.*

278. *See id.* art. 1(4) ("This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.").

279. *See id.* art. 1(3) ("Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.").

280. *Id.* art. 2. Article 2 states:

1. Each Contracting party shall have a Central Authority to make and receive requests pursuant to this Treaty. 2. For the United States of America, the Central Authority shall be the Attorney General or such persons, designated by the Attorney General. For the Republic of Hungary, the Central Authority shall be the Minister of Justice and the Chief Public Prosecutor or such persons designated by them.

*Id.*

281. *Id.* art. 3(1). Article 3(1) states:

The Central Authority of the Requested State may deny assistance if: (a) the request relates to a political offense; (b) the request relates to an offense under military law which would not be an offense under ordinary criminal law; (c) the execution of the request is likely to prejudice the sovereignty security or similar essential interests of the Requested State; or (d) the request does not comply with the provisions of Article 4.

MLAT provides specific guidance for form, contents of requests,<sup>282</sup> and their execution.<sup>283</sup> The Hungarian MLAT obligates the Requested State to do everything possible to execute the request,<sup>284</sup> and such execution will be performed under the laws of the Requested State, unless otherwise provided by the treaty.<sup>285</sup>

The Hungarian MLAT states that the Requested State must pay all costs associated with the execution of the request, except for certain fees of expert witnesses, costs of translation and interpretation, and expenses related to travel of persons under the treaty.<sup>286</sup> The evidence obtained under the Hungarian MLAT can only be used in investigation or prosecution described in the request, and the Requested State may demand for it to be kept confidential.<sup>287</sup> The treaty may compel the taking of testimony or production of documents in its territory upon the request of the Requesting State.<sup>288</sup> Even if a person asserts a claim of immunity or privilege under the laws of the Requesting State, the

*Id.*

282. *See id.* art. 4 (“A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations.”).

283. *See id.* art. 5(1) (“The Central Authority of the Requested State shall promptly execute the request or, when appropriate, transmit it to the authority having jurisdiction to do so.”).

284. *See id.* (“The competent authorities of the Requested State shall do everything in their power to execute the request.”).

285. *See id.* art. 5(3) (“Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. The method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.”).

286. *See id.* art. 6 (“The Requested State shall pay all costs relating to the execution of the request except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons.”).

287. *Id.* art. 7. Article 7 states:

1. The Central Authority of the Requested State may require that any information or evidence obtained under this Treaty not be used in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Requested State. 2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used in accordance with conditions which its Central Authority shall specify.

*Id.*

288. *See id.* art. 8(1) (“A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce any item, including, but not limited to, documents, records, and articles of evidence.”).

Requested State can still take the testimony, but the claim must be made known to the Requesting State for resolution by its authorities.<sup>289</sup>

The Hungarian MLAT requires the Requested State to provide copies of any documents or official records to the Requested State to the same extent that such copies would be available to the authorities of the Requested State, but, under certain circumstances, reserves a right of denial.<sup>290</sup> The treaty permits the voluntary invitation of a person in the Requested State to appear in the Requesting State<sup>291</sup> and transfer of persons in custody, with the consent of such person and the Requested State.<sup>292</sup> The drafters also inserted specific provisions for service of documents and search and seizure procedures.<sup>293</sup> Article 13

289. *Id.* art. 8(4). Article 8(4) states:

A claim by a person . . . of immunity, incapacity, or privilege under the laws of the Requested State shall be resolved by the judicial authorities of the Requested State. However, if such person asserts a claim of immunity, incapacity, or privilege under laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

*Id.*

290. *Id.* art. 9(2). Article 9(2) states:

The Requested State may provide copies of any documents, records, or information recorded in any form which are in the possession of a governmental or judicial authority in that State but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

*Id.*

291. *Id.* art. 10. Article 10 states:

The Requested State shall invite a person in that State to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the [Requesting State] of the person's response.

*Id.*

292. *See id.* art. 11(1) ("A person in the custody of the Requested State whose presence in the Requesting State is needed for purposes of assistance under this Treaty shall be transferred from the Requested State for that purpose if both the person and the Central Authority of the Requested State consent to the transfer.").

293. *See id.* art. 15(1) ("The Requested State shall execute a request for the search, seizure, and delivery of any item, including but not limited to any document, record, or article of evidence, to the Requesting State if the request includes the information justifying such action under the laws of the Requested State"); *see also id.* art. 15(2) ("If required by the Central Authority of the Requesting State, every official of the Requested State who has had custody of a seized item shall certify . . . the continuity of custody, the identify of the item, and the integrity of its condition.").

of the Hungarian MLAT requires the Requested State to use its best efforts to determine the location or identity of persons or items subject to the request.<sup>294</sup> Article 17 of the Hungarian MLAT provides that if one party discovers that proceeds or instrumentalities of offenses are located in the territory of the other party, it may so inform the Central Authority of that party.<sup>295</sup> The same article also requires both parties to provide assistance, to the extent permitted by their laws, in proceedings involving the forfeiture of the proceeds and instrumentalities of crime.<sup>296</sup> Furthermore, states can agree to share forfeited assets.<sup>297</sup> Finally, Article 18 provides that the Hungarian MLAT shall not restrict cooperation between the parties, and it can still take place through provisions of other international agreements or national laws.<sup>298</sup> The Hungarian MLAT does not limit cooperation to any particular criminal offenses.<sup>299</sup>

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294. *See id.* art. 13 ("The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.").

295. *Id.* art. 17(1). Article 17(1) states:

If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offenses which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that party, it may so inform the Central Authority of the other Party.

*Id.*

296. *Id.* art. 17(2). Article 17(2) states:

The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily restrain the disposition of the proceeds or instrumentalities of offenses pending further proceedings.

*Id.*

297. *See id.* art. 17(3) ("To the extent permitted by its laws and upon such terms as it deems appropriate, either Party may transfer forfeited assets or the proceeds of their sale to the other Party.").

298. *Id.* art. 18. Article 18 states:

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Party through the provisions of other international agreements to which it may be a State Party, or through the provisions of its national laws. The Contracting Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

*Id.*

299. *Id.*



## II. U.S.-RUSSIAN MUTUAL LEGAL ASSISTANCE AND BILATERAL COOPERATION

The United States and Russia currently have an agreement on mutual assistance, but experts note that, compared to an MLAT, it has significant flaws that diminish its effectiveness in combating organized crime.<sup>300</sup> Cooperation of U.S. and Russian law enforcement agencies, however, already exists and has produced considerable results.<sup>301</sup> Scholars believe that the new Russian laws can potentially lead to increasing U.S. and Russian joint prosecution efforts aimed at members of Russian organized crime.<sup>302</sup> Experts note, however, that Russian law enforcement agencies incur serious obstacles in their fight against organized crime and such obstacles must be overcome before genuine cooperation can take place.<sup>303</sup>

### A. U.S.-Russian Mutual Legal Assistance Agreement

Russia does not extradite its own citizens when they commit criminal acts abroad.<sup>304</sup> Moreover, the United States and the Russian Federation currently do not have an MLAT in force.<sup>305</sup> On June 30, 1995, the two countries signed an agreement concerning cooperation in criminal law matters, the Mutual Legal Assistance Agreement<sup>306</sup> that entered into force on February 5,

300. MLAA, *supra* note 24. See Abramovsky, *supra* note 128, at 208-10 (analyzing problems with Russian MLAA).

301. See Asnis, *supra* note 69, at 313-15 (describing cooperation between FBI and Russian law enforcement authorities).

302. CRIMINAL CODE, *supra* note 157, art. 12.

303. See Jankiewicz, *supra* note 106, at 250 (describing problems faced by Russian law enforcement officers); see also J. Michael Waller & Victor J. Yasmann, *Russia's Great Criminal Revolution: The Role of the Security Services*, 11 J. CONTEMP. CRIM. JUST., No. 4 (visited Sept. 17, 1999) <<http://www.afpc.org/issues/crimrev.htm>> (on file with the *Fordham International Law Journal*) (noting that corruption in law enforcement agencies is main obstacle to of their ineffectiveness).

304. CRIMINAL CODE, *supra* note 157, art. 13.

305. See *Corruption in Russia; Russia: Its Current Troubles and Its On-going Transformation*, Hearing Before the Senate Foreign Relations Comm., 106th Cong. (1999), available in 1999 WL 27594776 (testimony of Strobe Talbott, Deputy Secretary of State) (noting that Russia and United States signed MLAT in June 1999, but it has neither been ratified nor brought into force). Strobe Talbott believes that this MLAT "will expand and strengthen the scope of cooperation, facilitating investigation and prosecution of transnational criminals." *Id.* A representative of the U.S. Department of State informed the author on October 4, 1999, that the recently signed U.S.-Russian MLAT is not a public document and has not been released.

306. See MLAA, *supra* note 24 (stating that MLAA was signed because of "the need

1996<sup>307</sup>—it is intended to be a preparatory step to the eventual conclusion of an MLAT.<sup>308</sup> The annex to the MLAA lists specific criminal offenses to which it applies: drug trafficking,<sup>309</sup> money laundering,<sup>310</sup> organized criminal activity,<sup>311</sup> fraud,<sup>312</sup> sexual offenses against children,<sup>313</sup> trafficking in weapons,<sup>314</sup> violent crimes against individuals,<sup>315</sup> other offenses covered by multilateral treaties to which both Russia and the United States are signatories,<sup>316</sup> and attempt or conspiracy to commit any of these crimes.<sup>317</sup> The MLAA establishes a central authority in each state to oversee compliance with its terms.<sup>318</sup>

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to unite . . . efforts and strengthen cooperation between the competent authorities in both countries to prevent and fight against crime”).

307. *Id.*

308. *See id.* (stating that both governments expressed their intent “to conclude a mutual legal assistance treaty in criminal matters as soon as possible.”). The MLAA will expire when the actual MLAT between the United States and Russia is signed. *Id.*; *see also id.* art. 18(3) (“This agreement shall expire upon the entry into force of the mutual legal assistance treaty on criminal matters mentioned in the preamble to the present Agreement, unless the Parties otherwise agree.”).

309. *Id.* annex(1). The annex states that assistance will be provided in connection with investigating

[i]llicit traffic in narcotic drugs and psychotropic substances, including, but not limited to all offenses having any relationship to any narcotics activity described in the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, the 1972 Protocol Amending the Single Convention, or the 1988 United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

*Id.*

310. *See id.* annex(4) (stating that “[m]oney laundering, as defined under the laws of the United States of America and the Russian Federation, respectively”).

311. *See id.* annex (3) (stating that “[o]rganized criminal activity and racketeering, as defined under the laws of the United States of America and the Russian Federation, respectively”).

312. *See id.* annex(6) (“[f]raud; corruption involving Government officials, including bribery”).

313. *See id.* annex(8) (“[s]exual offenses against children, including child prostitution and child pornography”).

314. *See id.* annex(5) (“[o]ffenses against the laws relating to control of weapons, including nuclear weapons or other weapons of mass destruction; explosive substances, nuclear material, incendiary devices, or substances injurious to health”).

315. *See id.* annex (7) (“[v]iolent crimes against individuals”).

316. *See id.* annex(2) (“[o]ffenses encompassed in other multilateral treaties to which both the United States and the Russian Federation are parties”).

317. *See id.* annex(9) ([a]ny attempt or conspiracy to commit; aiding and abetting; or participation as a principal to any of the offenses described in this Annex”).

318. *Id.* art. 1. Article 1 states:

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Agreement. 2. For the United States of America, the Central Authority shall be the Attorney General. For the Russian Federation, in ac-

The scope of assistance under the MLAA includes obtaining testimony; statements and materials; providing documents, records, and other items; serving documents; locating and identifying persons; executing searches and seizures; and other types of assistance.<sup>319</sup> The MLAA limits assistance in certain areas, such as the military and areas related to national security.<sup>320</sup> Before denying assistance, however, the Requested Party should contact the Requesting Party to see if the latter would accept assistance subject to limiting conditions.<sup>321</sup> Certain limitations are likewise imposed by the MLAA on the use of results of executed requests.<sup>322</sup>

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cordance with its legislation, the Central Authority shall be the Office of the Procurator General of the Russian Federation. 3. The Central Authorities shall communicate directly with one another for the purposes of this Agreement.

*Id.*

319. *Id.* art. 2(2). Article 2(2) states:

Assistance shall include: (1) obtaining testimony, statements, and materials; (2) providing documents, records, and other items; (3) serving documents; (4) locating and identifying persons; (5) executing searches and seizures; (6) taking actions related to immobilization and forfeiture of assets; restitution; collection of fines; and (7) any other assistance not prohibited by the laws of the Requested Party.

*Id.*

320. *Id.* art. 3(1). Article 3(1) states:

The Central Authority of the Requested Party may deny assistance if: (1) the request relates to an offense under military law which would not be an offense under ordinary criminal law; (2) the execution of the request may prejudice the security or other essential interests of the Requested Party[;] . . . (4) the request is not made in conformity with the provisions of this Agreement.

*Id.* The MLAA does not define security or other essential interests. *Id.*

321. *See id.* art. 3(2) ("Before denying assistance . . . Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them."); *see also id.* art. 3(3) ("If the Central Authority of the Requested Party denies assistance, it shall inform the Central Authority of the Requesting Party of the reasons for the denial.")

322. *Id.* art. 7. Article 7 states:

1. The Central Authority of the Requested Party may request that the Requesting Party not use the product of the execution of a request obtained under this Agreement for purposes other than those described in the request without the prior consent of the Central Authority of the Requested Party. In such cases, the Requesting Party shall comply with such limitations on use of the products of the executed request. 2. The Central Authority of the Requested Party may request from the Central Authority of the Requesting Party that the product of the execution of a request furnished under this Agreement be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting Party accepts the product of the execution of a request subject

There are, however, a few substantial differences between the MLAA and an MLAT.<sup>323</sup> First, unlike an MLAT, the MLAA has a very narrow focus: it is limited to the specific offenses listed in it.<sup>324</sup> One expert has noted that while it does include the most important and typical types of crime, such as narcotic drugs trafficking, organized criminal activity and racketeering, money laundering, armstrafficking, including weapons of mass destruction, fraud, and violent crime, its specificity creates problems for authorities dealing with Russian organized crime.<sup>325</sup> As explained above, Russian organized criminal groups participate in an unlimited variety of illegal activities around the world, and it is impossible to list all of them in a single agreement.<sup>326</sup> The second difference between this agreement and an MLAT is the dual criminality provision<sup>327</sup>—in order for the assistance to be provided, the offense subject to the request must be a criminal offense under the laws of both states.<sup>328</sup> Even with the adoption of the Criminal Code, which contains provisions designed to combat the spread of organized crime and criminal activities, some of the offenses do not overlap, and therefore do not fall within the MLAA's scope.<sup>329</sup>

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to such conditions, the Requesting Party shall use its best efforts to comply with the conditions. 3. Nothing in this Article shall preclude the use or disclosure of the product of the execution of the request to the extent that there is an obligation to do so under the Constitution or laws of the Requesting Party in a criminal prosecution. The Central Authority of the Requesting Party shall notify the Requested Party in advance of any possible or proposed disclosure.

*Id.*

323. See generally Abramovsky, *supra* note 128, at 208-10 (stating that while MLAA is important step in U.S.-Russian cooperation, it contains numerous deficiencies that could be corrected by MLAT).

324. See MLAA, *supra* note 24, art. 2(1) ("In accordance with this Agreement, mutual assistance shall be provided in connection with the investigation, criminal prosecution, and prevention of offenses described in the Annex to this Agreement").

325. See Abramovsky, *supra* note 128, at 210 (stating that "the broad scope of Russian criminal activity requires a broadly focused treaty").

326. See *id.* (noting that Russian organized crime in United States engages in unlimited number of criminal activities).

327. See MLAA, *supra* note 24, art. 3(1)(3) ("The Central Authority of the Requested Party may deny assistance if . . . the conduct in connection with which the request is received would not constitute an offense under the laws of the Requested State").

328. See Abramovsky, *supra* note 128, at 208-10 (noting that treaties usually contain safeguards to prevent lack of dual criminality provisions from being used by non-democratic governments as political tool to persecute their citizens living abroad).

329. See *id.* at 209 (stating that "corrupt enterprises operating in the United States

There are, in addition, other smaller differences between the MLAA and an MLAT.<sup>330</sup> The MLAA dictates that assistance in forfeiture proceedings, related to the confiscation of proceeds and instrumentalities of criminal offenses, take place according to the laws of the Requested Party.<sup>331</sup> Unlike a typical MLAT, the MLAA neither includes a political offense exception,<sup>332</sup> nor does it include a provision that enables the MLAA to be superior in application to the existing local laws.<sup>333</sup> Additionally, practitioners note that the MLAA does not clearly define what types of assistance are expected of the parties and it fails to enumerate what types of financial information can be requested by each state.<sup>334</sup>

### B. U.S. Law Enforcement in Moscow

Some cooperation between law enforcement authorities in the United States and Russia is already taking place.<sup>335</sup> Most of the present U.S.-Russian cooperation occurs between Russian law enforcement authorities and the FBI.<sup>336</sup> On July 4, 1994, the FBI opened a legal attaché office in Moscow,<sup>337</sup> with the aim of

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and Russia may not fall within the purview of the Agreement if their members commit no acts specifically criminalized within the Russian Federation.”).

330. *Id.* at 208-10.

331. MLAA, *supra* note 24, art. 15. Article 15 states:

If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offenses which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party . . . . Each authority shall issue its decision in accordance with its laws, and its Central Authority shall report to the other Party on the decision . . . . The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws.

*Id.*

332. Abramovsky, *supra* note 128, at 208-09; see Louis Rene Beres, *The Legal Meaning of Terrorism for the Military Commander*, 11 CONN. J. INT'L L. 1, 18 n.63 (1995) (noting that such exception would permit requested party not to render assistance in prosecuting offenses that are political in nature).

333. See Abramovsky, *supra* note 128, at 210 (noting that Swiss MLAT has such provision in regard to local banking laws).

334. See *id.* at 211 (noting that MLAT would require reporting suspicious banking transactions even without request from contracting state).

335. See generally Peter, *supra* note 19 (describing three-day visit of Freeh to Moscow in November 1997). During his visit, Freeh addressed the danger of terrorist groups obtaining nuclear materials. *Id.*

336. See generally Asnis, *supra* note 69, at 313-15 (describing FBI's plans to fight Russian organized criminal organizations in Moscow).

337. See *Freeh Opens Moscow Office of FBI, Visits Lubyanka*, BOSTON GLOBE, July 5,

facilitating the flow of information about criminal activities in the United States and the Russian Federation between the FBI and the Interior Ministry of Russia.<sup>338</sup> The office opened with a caseload of approximately thirty-five cases, which increased to 284 by 1997, covering about 150 leads from FBI investigations in the United States.<sup>339</sup> According to Freeh, the objective of the FBI office in the Russian capital is not only to combat Russian-related crime in the United States,<sup>340</sup> but also to focus on Russian organized crime's activities against U.S. businessmen operating in Russia.<sup>341</sup>

Just two days after opening the FBI office in Moscow, Freeh and Russian Interior Minister Viktor Yerin signed an informal cooperation agreement to combat organized crime.<sup>342</sup> The contents of the accord were secret,<sup>343</sup> but it supposedly called for specific cooperation measures, such as an exchange of information among police forces, cooperation in investigations, detention of alleged criminals in each other's jurisdictions, and the

1994, at 2 (noting that Freeh became first FBI director to visit Moscow). Two special agents were assigned to the FBI office in Moscow. *Id.*; see also Wendy Sloane, *FBI's Moscow Mission: The Mob, Nuclear Theft*, *CHRIST. SCI. MONITOR*, July 5, 1994, at 6 (quoting Freeh as stating that "[u]nlike in the United States, where it took the FBI 50 years to acknowledge the existence of organized crime, the [Interior Minister] and the government [in Russia] have moved very quickly to acknowledge the problem."). Freeh's visit to Moscow was part of his 10-day visit in Eastern and Central Europe. Sloane, *supra*.

338. See John Iams, *FBI Chief Signs Protocol; Agents To Be Assigned to Moscow*, *ASSOCIATED PRESS*, July 5, 1994, available in 1994 WL 10116604 (quoting Freeh as stating that "[t]he borders between our countries with respect to criminals is [sic] very transparent. Money as well as criminal activity flows freely between them.").

339. See *International Organized Crime and Global Terrorism: Hearings Before the House Comm. On International Relations*, 105th Cong. 59-60 (1997) (statement of Louis J. Freeh, Director, FBI) (explaining that decision to open FBI office in Moscow was related to increasing number of Russian-related crimes in United States).

340. See *id.* (noting that problem of Russian organized crime is more extensive than FBI initially believed).

341. See Julia Rubin, *Deadly Battle To Make It in Moscow*, *ASSOCIATED PRESS*, Nov. 25, 1996, available in 1996 WL 11103041 (describing dangers that await U.S. businessmen in Russian capital). A good example is the murder of Paul Tatum, the Oklahoman businessman gunned down with a Kalashnikov assault rifle in Moscow on November 3, 1996, minutes after leaving his apartment at the Radisson-Slaanskaya Hotel. *Id.* The alleged motive for the murder was that the "Moscow business community [was] tired of Tatum and his blizzard of publicity." *Id.*

342. See Jonas Bernstein, *U.S., Russia Sign Anti-Gangster Pact; Information on Organized Crime To Be Shared by Both Countries*, *WASH. TIMES*, July 6, 1994, at A12 (noting that Freeh also invited Viktor Yerin to United States to meet with U.S. law enforcement officials).

343. See Asnis, *supra* note 69, at 314 n.71 (stating that actual language of agreement was classified).

training of Russian police officers in the FBI's more modern police techniques.<sup>344</sup> Freeh reiterated that special cooperation is needed, especially due to the potential sale and diversion of nuclear materials by Russian criminal groups.<sup>345</sup>

During the 1995 fiscal year, the FBI trained 4400 foreign personnel, including law enforcement officers from Russia.<sup>346</sup> The U.S. Congress established an Interagency Working Group, which has recommended training and other valuable tactics that law enforcement officials received in the Russian Federation, republics of the former Soviet Union, and other Eastern European countries.<sup>347</sup> Moreover, in 1995 the U.S. government opened the International Law Enforcement Academy, a training school for law enforcement personnel in Budapest, Hungary.<sup>348</sup> Law enforcement officers from nations such as Russia, Hungary, and Czech Republic go through an eight-week professional program.<sup>349</sup>

Practical Case Training, an on-the-job training program, has also become an important cooperative effort between the FBI

344. *Id.*, at 314. See Lee Hockstader, *U.S., Russia Set Joint Crime Fight; Freeh, in Moscow, Signs Agreement*, WASH. POST, July 6, 1994, at A22 (noting that this non-binding agreement was preliminary step to MLAT).

345. See Asnis, *supra* note 69, at 314-15 (quoting Freeh as stating that both countries should be concerned "about the potential sale and diversion of nuclear materials by and among Russian/Eurasian groups").

346. See *The Threat from Russian Organized Crime: Hearings Before the House Comm. on International Relations*, 104th Cong. 58 (1996) (statement of Louis J. Freeh, Director, FBI) (noting that such training is critical to law enforcement agencies of newly democratized nations).

347. See *id.* at 62-66 (quoting Freeh as stating that "this has been a successful endeavor that greatly assists us in the proper coordination of our training efforts abroad."). The FBI participates as a member of the Interagency Working Group and helps to carry out its programs. *Id.*

348. See Christian Caryl, *The Very Long Arm of American Law: A "Forward Defense" Against Organized Crime*, U.S. NEWS & WORLD REP., July 7, 1997, at 49 (noting that trainees arrive from many European and Euroasian former Communist-bloc countries). Many students already have significant police experience, but lack the experience of law enforcement within a democratic society. *Id.* As one FBI special agent reiterated, "If you were a cop in one of these places in the old days, all you had to do was figure out where the criminals were, and then you went there and broke down the door and got 'em. You didn't have to worry about warrants and judges and procedures." *Id.*

349. See *id.* (quoting FBI official in charge of international efforts as saying that "[n]ow we can draw on people who know how [the gangs] think and how they work. We have Russian police officers coming over here and working in FBI cars with us on surveillance."). The Academy has an annual budget of US\$3 million. *Id.*; see also Freeh, *supra* note 346, at 58 (stating that three classes of mid-level police officers graduated from Hungarian Academy in first year of its existence).

and the Russian government.<sup>350</sup> The program provides for international police entities and FBI agents to work together on investigations of mutual interest.<sup>351</sup> It was under this program that the Russian Federation Ministry of the Interior officers traveled to New York to participate in an investigation and trial of Ivankov.<sup>352</sup>

### C. Possibility for Joint Prosecutions

The refusal of the Russian government to extradite its criminals makes the prosecution of members of Russian organized crime in the United States more difficult, as many of them may flee back to Russia after committing criminal acts abroad.<sup>353</sup> On the other hand, Article 12 of the Criminal Code allows the prosecution and incarceration of Russian citizens for committing criminal acts abroad.<sup>354</sup> To fall within Article 12's proscriptions, the criminal act must satisfy the dual criminality requirement,<sup>355</sup> and the person(s) charged cannot have been convicted of the offense underlying the charge in the requesting country.<sup>356</sup> The sentence imposed under Article 12 cannot exceed the maximum sentence provided by the state where the offense was committed.<sup>357</sup> Furthermore, Article 12 provides for prosecution under the Criminal Code of servicemen who commit criminal acts in another country if the underlying act is not governed by any international treaty signed by the Russian Federation.<sup>358</sup> Finally, the Criminal Code provides that non-Russian citizens and stateless persons, who are not permanent residents of the Russian Federation, may be prosecuted in Russia for criminal acts committed in other countries if their crimes were directed against the interests of the Russian Federation or if they fall

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350. See Freeh, *supra* note 339, at 63-64 (testimony of Louis J. Freeh, Director, FBI) (noting that this program resulted in several successful investigations).

351. *Id.*

352. See *id.* at 64 (quoting Freeh as stating that participation of Russian officials aided investigation of Ivankov).

353. CRIMINAL CODE, *supra* note 157, art. 13.

354. See *id.* (stating that Article 12 applies to citizens of Russian Federation and stateless permanent residents of Russian Federation, who have committed criminal acts abroad).

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.*



under any international treaty signed by the Russian Federation—assuming that they have not been convicted in a foreign state.<sup>359</sup>

One scholar notes that the legal environment created by the Criminal Code is similar to that which exists between the United States and Israel, which also does not extradite its own nationals.<sup>360</sup> A provision similar to Article 12 of the Criminal Code has allowed Israel and the United States to conduct informal law enforcement cooperation and joint prosecutions of members of organized crime.<sup>361</sup> Despite numerous potential problems, the U.S.-Israeli model could be very helpful in fighting Russian organized crime and, therefore, should be something that law enforcement officials on both sides should carefully examine.<sup>362</sup>

#### D. *Obstacles to a U.S.-Russian MLAT*

Practitioners note that one of the major problems in dealing with Russia is cultural.<sup>363</sup> While years of *perestroika* and democratization have brought the United States and Russia together,<sup>364</sup> much distrust between the two nations persists, and Russians may view the increasing role of U.S. prosecutors and law enforcement authorities as an infringement on Russian sov-

359. *Id.*

360. See Abramovsky, *supra* note 128, at 213 (noting that, despite Israel's refusal to extradite its nationals, the United States and Israel cooperate in prosecution of international crime figures).

361. See *id.* (briefly discussing cases of U.S.-Israeli joint prosecution efforts).

362. See generally *id.* at 214-15 (noting that potential problems of prosecuting Russian nationals in Russian Federation for crimes committed abroad include inadequacy of Russian criminal laws and corruption of law enforcement authorities).

363. See generally LAYARD & PARKER, *supra* note 29, at 7-17 (quoting Marquis de Custine, who in 19th century wrote, "[t]he more I see of Russia, the more I approve the conduct of the Emperor in forbidding his subjects to travel, and in rendering access to his own country difficult to foreigners. The political system of Russia could not survive twenty years' free communication with the rest of Europe."). Pyotr Chaadayev, a 19th century Russian writer and philosopher, declared, "We do not belong to any of the great families of mankind, neither to the East nor to the West." *Id.* at 8; see also LUDMILLA ALEXEYEV & PAUL GOLDBERG, *THE THAW GENERATION, COMING OF AGE IN THE POST-STALIN ERA* 38-40 (Pitt. U. Press 1993) (giving examples of Russian anti-Western attitudes). Anti-Western campaigns in the Soviet Union included the renaming of French bread into "City" bread and of a candy called the "American Nut" into "Southern Nut." ALEXEYEV & GOLDBERG, *supra*, at 38. At one point, the Soviet government forbade its citizens to read books written by foreign authors. *Id.*

364. See Abramovsky, *supra* note 128, at 202 (noting that since 1991 U.S. and Russian law enforcement authorities have been developing professional relationships).

ereignty.<sup>365</sup> On the more practical side, practitioners believe that the history of distrust and hostility brought by the Cold War has led to U.S. and Russian authorities having very little chance to develop informal contacts.<sup>366</sup> In addition, experts note that while, for example, the United States and Israel have somewhat different legal systems, they are both, unlike the Russian legal system, based upon the English common law.<sup>367</sup> Finally, there are no established legal professionals in Russia, as most of the lawyers and prosecutors there were trained in Soviet schools, and have very little or no experience concerning the law as it exists in a democratic society.<sup>368</sup> Practitioners note that Russia has an inefficient legal system, and can hardly be counted upon to effectively combat Russian organized crime.<sup>369</sup> In 1996, Issai Sukharev, a senior official in the Russian Ministry of Justice, stated that Russia had only 22,000 lawyers, and some 180 districts in the Russian Federation had no lawyers at all.<sup>370</sup> This lack of experienced legal professionals is problematic, especially taking into account the difficulty and complexity of prosecuting organized criminal group members.<sup>371</sup>

Russia's severe economic troubles worsen the problem.<sup>372</sup> Russian police officers often lack basic technology, such as facsimile machines and even telephones, and simply cannot afford

365. See Vassalo, *supra* note 54, at 188 (noting that MLAT does in fact restrict law-enforcement sovereignty of state authorities).

366. See Abramovsky, *supra* note 128, at 201 (noting that no formal law-enforcement treaty relationship existed between Soviet Union and United States). Experts believe that informal contacts are very important in conducting joint prosecution and evidence-gathering. *Id.* at 202. U.S. and Russian law enforcement authorities have difficulty implementing joint law enforcement measures in absence of formal extradition and MLATs. *Id.* at 201.

367. See Abramovsky, *supra* note 215, at 1912 (describing Israeli system of criminal procedure).

368. See Cormaney, *supra* note 30, at 311 n.240 (noting that sole requirement for practicing law in Russia is graduation from law school).

369. See *id.* (noting that understaffed Russian judges often face threats of violence). In 1994, Russian district judges were making the equivalent of US\$75-100 per month. *Id.* at 311 n.236.

370. See Natyalya Gamayunova, *Troubles with Lawyers*, *MOSCOW TIMES*, Feb. 2, 1996, available in LEXIS, News Libr., ARCNWS (noting that number of lawyers in United States and Germany were 400,000 and 60,000, respectively).

371. See Cormaney, *supra* note 30, at 303 (noting that Russia does not have legal professionals sufficiently competent to implement complex criminal statutes).

372. See generally Jankiewicz, *supra* note 106, at 250 (describing law enforcement problems stemming from lack of financial resources).

sophisticated investigative equipment.<sup>373</sup> The Russian government lacks the resources to hire new and able investigators, to buy automobiles and fill them with gasoline, or to purchase essential computer equipment.<sup>374</sup> Sometimes police officers have to hail taxi cabs or use public transportation to conduct surveillance or follow suspects.<sup>375</sup>

Commentators believe that complicating these problems is the unwillingness of Russian authorities to investigate organized criminal activity.<sup>376</sup> There is evidence of highly ranked governmental officials and military officers being involved in organized crime.<sup>377</sup> Corruption among law enforcement authorities is on the rise, with police officials in Moscow reporting that as much as ninety-five percent of the police force is being bribed.<sup>378</sup> Some of the younger police officers consider the bribes as the main reason to join the force.<sup>379</sup> Police corruption has reached a level so high that organized crime figures can sometimes or-

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373. *See id.* (noting that lack of national criminal history record-keeping makes combating crime even more difficult).

374. *Id.*

375. *See id.* (noting that certain parts of Russia do not have any investigators).

376. *See generally* LAYARD & PARKER, *supra* note 29, at 161-63 (quoting one Russian source stating that "the Moscow city authorities are the most corrupt government that has ever existed"). In July 1993, a Russian businessman in Germany supplied the wives of a Russian security minister and a deputy interior minister with US\$350,000 worth of goods, such as perfumes, watches, and fur coats. *Id.* at 161-62. The security minister, Viktor Barannikov, was consequently fired. *Id.* at 162. Corruption also negatively affected Russian privatization programs. *Id.*

377. *See Woolsey, supra* note 141, at 81 (noting that these individuals possess skills that increase power of organized criminal groups).

378. LAYARD & PARKER, *supra* note 29, at 167. The Moscow police chief claimed that

[e]very criminal has high connections in the police and officialdom. I would guess that about 90 percent of the militiamen who operate out of local police stations in this city are on the take. It gets a little better as you go up the line: maybe about 15 percent of the middle-ranking police bureaucracy are on the take.

*Id.*; *see also* Jankiewicz, *supra* note 106, at 250 (noting that corruption adds to already existing disadvantage of criminal figures being better equipped and supported than their governmental adversaries).

379. *See* LAYARD & PARKER, *supra* note 29, at 167 (noting that in mid-1993 government paid policemen equivalent of US\$30 per month). As the authorities did not do a background check on new recruits, the criminal world could send their members to become policemen. *Id.* In 1992, more than 2000 policemen were charged with criminal offenses. *Id.*

ganize parties for jailed colleagues.<sup>380</sup> This situation has led some legal experts to claim that Russian law enforcement agencies and intelligence services, instead of fulfilling their role of combating organized crime, have themselves become part of the problem due to their penetration by criminal elements and their use of crime as an instrument of state policy.<sup>381</sup> Corrupted by organized crime, some law enforcement employees are now either personally involved or just turn their eyes away from money laundering, drug smuggling, and continued theft of Western business and financial information.<sup>382</sup>

The recent case of money laundering at the Bank of New York demonstrated how corruption in Russian law enforcement agencies complicates international and bilateral cooperation in the fight against Russian organized crime.<sup>383</sup> U.S. law enforcement officials refused to share information with their Russian counterparts due to fears that Russian officials could not be trusted with secret information, and it would quickly reach the people being investigated.<sup>384</sup> At the same time, the investigators admitted that Russian help will be essential to prove that money had originated from criminal activity, provided that investigation will lead to charges against the suspects.<sup>385</sup> At the same time, the

380. See Cormaney, *supra* note 30, at 250 (noting that criminals have better equipment than law enforcement authorities investigating them).

381. See Waller & Yasmann, *supra* note 303 (stating that internal crime and corruption represent biggest threats to Russian society). The authors note that members of Russian law enforcement authorities participate in a variety of organized criminal activities, such as illegal privatization, money laundering, and drug smuggling. *Id.* Russian parliamentary investigators noted after interviewing Russian security officers that "[t]hey have no understanding in their minds that they are serving the constitution or the law; they have no reverence for the rule of law and citizens' rights." *Id.*

382. See *id.* (noting that government corruption is rated as greater threat to Russia's economic well-being than decline of industrial output and growth of organized crime).

383. See Jesse Angelo, *Money-Laundry Probers Say Nyet to Russian Help*, N.Y. Post, Sept. 1, 1999, at 7 (noting that U.S. investigators refuse to share information with Russian colleagues).

384. See *id.* (quoting one U.S. intelligence source saying that "[t]he feeling is that [Russians] cannot be trusted to keep intelligence secret"). U.S. and British probers also fear that Russians may supply incorrect information to protect their political bosses. *Id.*; see also Caryl, *supra* note 348, at 50 (noting that FBI is suspicious of Russian law enforcement agencies' request for information without clear justification).

385. See *id.* (noting existence of reports that link Russian President Yeltsin to scandal in New York). Russia's top prosecutor recently ordered the Federal Security Service of the Russian Federation to look into the matter. *Id.*; see also Jesse Angelo, *Russian: FBI's Got Proof on BNY*, N.Y. Post, Sept. 21, 1999, at 46 (stating that U.S. prosecutors

Federal Security Service, Russia's intelligence agency, refused U.S. requests to provide bank statements and other documents related to the Bank of New York investigation.<sup>386</sup> This refusal came despite assurances from Russian public officials that Russia was willing to cooperate with U.S. authorities in the investigation of money laundering in the Bank of New York.<sup>387</sup>

The Russian government indirectly admitted its inability to fight organized crime through passing the *Law on Weapons* in 1996<sup>388</sup> ("Law on Weapons"), which, for the first time since the 1917 Bolshevik Revolution, allowed widespread ownership of guns.<sup>389</sup> According to the newly-passed Law on Weapons, the government can only deny gun ownership licenses to certain categories of people, such as minors, mentally ill, convicted criminals, and those without permanent residence.<sup>390</sup> Propo-

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believe they will need cooperation of Russian officials). FBI agents planned to travel to Moscow to continue investigating the money laundering probe. Angelo, *supra*.

386. See Jack Kelley, *Russia Turns U.S. Down in Bank Probe*, USA TODAY, Sept. 28, 1999, at A1 (noting that request was made by U.S. Department of Justice and delivered to Russia's Central Bank and Prosecutor's General's Office).

387. See *id.* (quoting Russian Prime Minister Vladimir Putin as repeatedly stating that Russia was cooperating with U.S. investigation). Former U.S. Central Intelligence Agency counterterrorism chief Vincent Cannistraro stated that "[t]hey're [Russian law enforcement officials] trying to find out what it is we know before they play." *Id.*; see also Higgins, *supra* note 75, at A4 (quoting Igor Shabdursulov, Yeltsin's deputy chief of staff, as stating that "[t]here are grounds to believe that this scandal has to a large degree been inspired by circles in Russia and abroad with an aim to discredit Russia, humiliate it and push it farther away from making important decisions on the international arena."); Robert O'Harrow Jr., *Bank Probe Seeks Help Abroad; Unsealing of Indictments May Foster Sharing of Information*, WASH. POST, Oct. 7, 1999, at E3 (noting that unsealing of first three indictments in case of Bank of New York may foster sharing of information between U.S. and Russian law enforcement agencies). Rayburn Hesse, a former senior policy adviser on financial crimes at the U.S. Department of State, stated that "[a]s you determine the money distribution to other banks, to other countries, you have to share as much information as possible." O'Harrow, *supra*.

388. Federal'niy Zakon ob Oruzhii (Law on Weapons), No. 150-FZ of December 13, 1996, Sobr. Zakonod. RF, 1996, No. 51, Item 5681 [hereinafter Law on Weapons]. The Law on Weapons came into effect on July 1, 1997. *Id.*

389. See Charles W. Holmes, *With Violent Crime on Rise, Russia Unlocks Gun Cabinet*, AUSTIN AM.-STATES., Nov. 17, 1997, at A1 (noting that law still restricts types of weapons citizens can own); see also Peter Ford, *Crime-Wary Russians Get Their Guns*, CHRIST. SCI. MONITOR, Aug. 1, 1997, at 1 (quoting police lawyer stating that "[t]he state today is unable to protect its citizens. Until the police are paid properly the problem of armed crime is not going to be solved, and citizens will have to defend themselves."). The number of crimes involving firearms increased from 3401 in the entire Soviet Union, then encompassing 15 republics, in 1986, to 12,150 in Russia alone in 1995. *Id.*

390. Law on Weapons, *supra* note 388, art. 13. Article 13 states:

The right to purchase weapons of self-defense, sport and hunting rifles, signal

nents of this law argued that bearing arms is a personal freedom, and that it gives citizens the right to protect themselves against the Russian crime wave.<sup>391</sup> Opponents of the law claimed that it would lead to the furtherance of lawlessness and guns being used in daily quarrels.<sup>392</sup> Underlying the new law, however, was an uncontested fact that the underfunded and demoralized police force cannot adequately protect Russian citizens, who must now take the issue of personal security into their own hands.<sup>393</sup> Scholars believe that powerful law enforcement institutions are essential for Russia to fight organized crime, but today's Russian law enforcement authorities are incapable of individually assuming the responsibility of fighting organized crime.<sup>394</sup>

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weapons . . . [is available] for citizens of the Russian Federation, who are at least eighteen years of age, after they receive a license from local bodies of internal affairs permitting the purchase of a certain type of weapon . . . . A license for purchase of weapons shall not be granted to citizens of the Russian Federation: who have not reached the aged set by this law; who cannot provide a medical certificate on the absence of undesirability of owning weapons; who have been convicted of a deliberate crime; who, within one year, have committed at least two administrative violations encroaching on public order or established order of governance; who do not have a permanent place of residence; who have not supplied to the bodies of internal affairs documents confirming passage of examination on rules of safe handling of weapons and other documents required by this law.

*Id.*

391. *See* Ford, *supra* note 389, at 1 (noting that parliamentary debate about new law went along political lines, with liberal democrats supporting and conservatives opposing it). Nikolai Kharitonov, leader of the Russian Agrarian Party worried that "[t]he law means that guns will be used in everyday quarrels. And it will create a situation where people will settle accounts between themselves without law or judge. Then no sheriff will be able to do anything." *Id.*

392. *See id.* (quoting Sergei Chuganov, Duma aid who helped to draft Law on Weapons, as stating that "I personally oppose the idea of any civilian except a hunter owning a gun. But on the other hand, when official organizations are unable to protect, . . . private individuals must have the right to defend themselves.").

393. *See* Holmes, *supra* note 389, at A1 (quoting one parliamentary member stating that "I'm not saying that people should start shooting at anyone who attempts to enter their apartment. But if the criminals know that more often than not someone they've targeted may have a gun, perhaps that's a deterrent."). The supporters of the law conceded that it could lead to gun accidents and domestic shootings, but these dangers were outweighed by the right for self-defense. *Id.*

394. *See* Cormaney, *supra* note 30, at 300 (noting that most of well-trained law enforcement professionals left for private employment). The biggest problem facing the Russian law enforcement today is the absence of public support and trust. *Id.* As one poll conducted in Russia showed, 73% of Russian citizens distrust the police force and 62% distrust the Russian security service. *Id.* at 300 n.224.

### III. A U.S.-RUSSIAN MLAT WOULD BE THE MOST EFFECTIVE WAY TO COMBAT RUSSIAN ORGANIZED CRIME

Russian organized crime has posed enormous problems for Russian society, its government, and its economy. Many believe it to be the biggest roadblock to the Russian Federation becoming a truly democratic and open nation with a strong market economy.<sup>395</sup> So far, unfortunately, Russian law enforcement authorities have not been effective in combating organized crime. Moreover, with the increased activities of Russian organized criminal groups in the United States and other countries, there is a need for increased bilateral and multilateral cooperation in combating this problem.

The new Russian Criminal Code contains many important provisions that have provided a significant legal basis for the serious fight against organized crime.<sup>396</sup> It includes provisions directly aimed at curbing the activities of organized criminal enterprises, and it also criminalizes the types of activities with which such enterprises are usually associated.<sup>397</sup> Moreover, the MLAA currently in force between the United States and the Russian Federation has been an important tool in the fight against transnational organized crime.<sup>398</sup> It provides for direct cooperation and legal assistance in obtaining evidence necessary for prosecution and conviction of members of organized crime.<sup>399</sup>

There is, however, a need for a stronger legal instrument that would facilitate the U.S. and the Russian Federation's fight against transnational organized crime, and the U.S.-Russian MLAT would be the most effective way to address this problem for a number of reasons. First, the MLAA, while containing im-

395. See *supra* notes 52-53 and accompanying text (noting that this problem undermines public support for government and state institutions).

396. See *supra* notes 179-86 and accompanying text (addressing crimes of "Banditism" and "Organisation of Criminal Society (Criminal Organisation)").

397. See *supra* notes 195, 197-99, and accompanying text (addressing problems of "Commission of Crime by Group of Persons, by Group of Persons by Prior Collusion, by Organized Group, or by Criminal Society (or Criminal Organization)" and "Legalisation (or Laundering) of Monetary Means or Other Property Acquired by Illegal Means").

398. See *supra* notes 24, 306, and accompanying text (stating that MLAA was drafted to address need for legal cooperation between Russia and United States).

399. See *supra* note 319 and accompanying text (listing types of assistance parties are obligated to provide in prosecution of organized of individuals suspected of criminal activities).

portant provisions, is still only a bilateral executive agreement. Alternatively, the U.S.-Russian MLAT, discussed and consented to by the U.S. Congress and the Russian Duma, would have a full force of a bilateral treaty. This statement is especially true for Russia, with its tense political atmosphere and strong Communist and nationalist presence in the State Duma, which often opposes measures undertaken by President Yeltsin. The U.S.-Russian MLAT's ratification, therefore, will make cooperation under the treaty not only more binding, but also more legitimate from a political process perspective.

Second, the U.S.-Russian MLAT would correct the shortfalls and the narrow scope of the MLAA.<sup>400</sup> Currently, assistance under the MLAA can be sought for prosecution of only nine offenses, explicitly mentioned in the MLAA's annex.<sup>401</sup> While activities specifically listed in the MLAA are the major offenses associated with organized crime, Russian criminal groups are multi-dimensional, and it would be very difficult to enumerate all activities in which organized criminal groups may be involved.<sup>402</sup> The U.S.-Russian MLAT, on the other hand, should remove such restrictions and require assistance in any offense that is classified as a crime in either Russia or the United States. This provision would also facilitate and simplify the job of both parties' law enforcement agencies, as they will not need to fit various activities into specific categories.

Also important would be the U.S.-Russian MLAT's provision that would remove the dual criminality requirement currently found in the MLAA.<sup>403</sup> Currently technical differences in defining particular criminal activities in the United States and the Russian Federation or differences in terminology may remove an offense from the scope of the MLAA. Moreover, there are no comprehensive Russian laws that specifically address the problem of organized crime, and the provisions of the new Criminal Code may not be specific enough or well-adapted to fight organ-

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400. See *supra* notes 300, 323, 328-30, and accompanying text (highlighting differences between MLAA and MLAT).

401. See *supra* notes 309-17 and accompanying text (listing offenses for which cooperation must be provided under MLAA).

402. See *supra* notes 325-26 and accompanying text (stating that treaty should be broadly based to encompass wide range of organized criminal activities).

403. See *supra* note 327 and accompanying text (noting that assistance does not need to be provided if activity does not constitute offense under laws of Requested Party).



ized criminal groups. The removal of the dual criminality provision would, therefore, enable U.S. and Russian law enforcement authorities to use powerful anti-organized criminal statutes, such as the Racketeer Influenced and Corrupt Organizations Act,<sup>404</sup> available in the United States. In addition, further legislative measures—such as the International Crime Control Act of 1998<sup>405</sup> and the Money Laundering Act of 1999<sup>406</sup>—are now being considered by the U.S. Congress, and if adopted, law enforcement agencies of both Russia and the United States would be able to utilize them in joint prosecution of Russian organized criminals in the United States.

It is important to note that both countries understand the importance of cooperation in dealing with transnational organized crime. As of October 1999, the United States has MLATs in force with twenty-six countries.<sup>407</sup> This list includes countries that are former republics of the Soviet Union or former members of the Eastern European Communist block, such as Hungary, Lithuania, and Poland.<sup>408</sup> Treaties with Ukraine, Estonia, Latvia, Czech Republic, and Romania have been signed but are not yet in force.<sup>409</sup> MLATs with these Eastern European countries reflect their strategic importance in the growing problem of Russian organized crime.<sup>410</sup> In turn, Russian governmental officials are also interested in expanding its legal framework of international cooperation.<sup>411</sup>

The insistence that simple ratification of U.S.-Russian MLAT

404. 18 U.S.C. § 1961 (1970).

405. See *supra* note 229 (noting that International Crime Control Act would allow U.S. law enforcement agencies to seize and forfeit assets of international criminals, to punish acts of violence committed against U.S. nationals, and to promote global cooperation). The International Crime Control Act consists of 50 new legislative measures, some of which were passed by the U.S. Senate in 1998. *Id.* They will be resubmitted to the U.S. Congress in late 1999. *Id.*

406. See *id.* (noting that Money Laundering Act of 1999 would make it easier for U.S. law enforcement agents to gain access to foreign business records, would facilitate prosecution of money laundering, and would encourage cooperation with foreign governments).

407. See *id.* (listing countries with which United States has MLAT in force).

408. *Id.*

409. *Id.*

410. See *supra* note 253 (stating that expansion of Russian organized crime threatens Eastern European countries).

411. See *supra* note 105 (quoting Russian Interior Minister Vladimir Rushailo as stating that international efforts of law enforcement bodies are necessary to fight transnational organized crime).

would result in full and total cooperation between the law enforcement authorities of both countries is overly optimistic. A U.S.-Russian MLAT might provide a legal basis for cooperation, but there must still be a desire to cooperate. Even with the treaty in force, the United States and the Russian Federation will remain sovereign nations, and they cannot be forced to follow the treaty's provisions. Practical problems would arise as well. For example, Russia has failed to designate and maintain a single point-of-contact with whom U.S. law enforcement authorities can cooperate.<sup>412</sup> In addition, other serious problems, such as mutual mistrust—like the one currently being displayed in the Bank of New York case—Russia's internal calamities, corruption among governmental and law enforcement officials,<sup>413</sup> lack of financing, and economic problems, might thwart cooperation.<sup>414</sup> It is also reasonable to fear that the elections to the State Duma in December 1999 and the presidential elections set to take place next year may now be viewed by Russians as of greater priority than organized criminal activities.

With the presence of all the problems listed above, however, the entry into force of the U.S.-Russian MLAT is essential to fight the spread of Russian criminal groups in the Russian Federation, the United States, and other countries. This treaty would provide the legal framework that both countries would be obligated to follow in the area of law enforcement. The provisions of the U.S.-Russian MLAT would be binding, would make legal cooperation obligatory, and—as such—would be a powerful tool in controlling the spread of Russian organized crime.

### *CONCLUSION*

Russia is no longer the empire that it was ten or fifteen years ago, but it is still too big and too important for the rest of the world to ignore. Organized crime is presenting Russia with

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412. *See supra* note 229 (noting that high-level Russian authorities promised to solve this problem by establishing special office, under Procurator General's Office, to enhance level of cooperation).

413. *See supra* note 377 (stating that number of reports proves ties between Russian military officials and members of organized criminal groups). Ties to the Russian military facilitate organized criminal groups' access to sophisticated weapons and technology. *Id.*

414. *See supra* notes 303, 372, 378, and accompanying text (describing numerous problems plaguing Russian law enforcement agencies).

enormous problems, draining the country's financial resources, destroying its economy, and undermining the people's faith in the democratic future of their country. The country does not have a significant history of criminal law enforcement, and does not possess the necessary legal measures or economic power to address the problem of organized crime. The Russian Federation's unilateral attempts to deal with the activities of Russian organized crime in Russia and abroad have not been successful. Moreover, Russian organized crime has had a negative effect on other countries, including the United States, thus making it an international problem. As such, it requires bilateral and multi-lateral solutions.

It is therefore all too obvious that Russia needs to secure the help of other countries, but especially that of the United States, in trying to eliminate its organized crime problem. Practitioners believe that the kind of cooperation that exists between the United States and the governments of Hungary, Israel, Italy, Switzerland, and other nations can serve as a role model for the Russian Federation. Ratification and implementation of a U.S.-Russian MLAT is needed to address the transnational nature of Russian organized crime. It would provide the legal framework essential for cooperation between the governments and law enforcement authorities of the United States and the Russian Federation.

Removal of the worldwide threat of Russian organized crime is in both the United States' and Russia's interest, and it is essential that the two of them work together in elimination of the problem. Vyacheslav Ivankov's case was the first major prosecution of a Russian criminal figure in the United States, which involved close cooperation between U.S. and Russian law enforcement agencies working together on both sides of the Atlantic in search of justice. There is hope that more prosecutions, like that of Vyacheslav Ivankov, will follow. Adoption of a U.S.-Russian MLAT would facilitate such cooperation, and—hopefully—will make it the norm rather than an exception.