

INTERNATIONAL CRIMINAL LAW AND ENFORCEMENT

Expert Analysis

Using Anti-Corruption Laws To Address Overseas Security Threats

There is no more important federal priority than the war against global terrorism. In this battle, federal agencies and law enforcement offices are utilizing every weapon in the arsenal. In our last column, we wrote about how the U.S. Treasury Department uses its broad anti-money laundering powers to combat global terrorism and rogue states and banks. In this column, we discuss how a recent prosecution demonstrates that the U.S. Department of Justice (DOJ) similarly uses anti-corruption laws to attack indirectly overseas security threats that it cannot necessarily attack directly. The message to multinationals that deal in sensitive materials and their counsel is not only to know your customer, but also to know that the U.S. will closely monitor these markets and use its laws to the maximum extent. Moreover, firms must be wary that questionable transactions that appear to be about corruption and money may actually be about something far worse.

Last month, using federal money laundering statutes, the DOJ secured the conviction and four-year sentence of an official with Rosatom, Russia's state-owned nuclear corporation. Rosatom controls every aspect of the Russian nuclear complex, including the sale of nuclear material. The Rosatom official pleaded guilty to receiving \$2 million in bribes to steer Rosatom contracts to a U.S. vendor. A principal of the vendor pleaded guilty to Foreign Corrupt Practices Act and wire fraud charges.

To date, it appears to be a typical case about money, but the notion that the services of Rosatom officials may be available to the highest bidder is disturbing to say the least and certainly would have heightened the DOJ's interest. Indeed, the DOJ went to extraordinary lengths—ultimately unsuccessful—to try and secure the Rosatom official's cooperation. Moreover, as the Rosatom official was prosecuted, media reports described the DOJ's efforts to assist overseas authorities in investigating and disrupting a thriving black market for nuclear material.

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The DOJ's ability to act in foreign countries is limited at best. Recent events also make clear that international cooperation on issues such as nuclear non-proliferation and sanctions are far from certain. The DOJ, however, can unilaterally seek to combat such serious crimes through anti-corruption and anti-money laundering prosecutions.

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Rosatom and Vadim Mikerin

In 2007, Russian President Vladimir Putin signed a law making Rosatom a state-owned corporation. Rosatom now controls every aspect of the Russian nuclear complex—research, exploration, safety agencies, military and civil use. Its executive suite is full of current and former Russian government officials. Rosatom is also huge. It is a monopoly in Russia, and holds contracts to participate in construction of nuclear reactors throughout the world, including in Iran. In 2013, it carried out a corporate transaction that gives it control over one-fifth of the uranium production capacity in the U.S.¹

Rosatom also assumed control over a joint program between the U.S. and Russia to secure Russia's stockpile of nuclear weapons and keep it from falling into the wrong hands. Beginning in the 1990s, the U.S. and Russia began cooperating on a series of initiatives that included the Nunn-Lugar Cooperative Threat Reduction Program (the Reduction Program), also called the "Megatons to Megawatts Program." Under the Reduction Program, the U.S. helped fund and facilitate the disassembly of Russian nuclear weapons and sites. The resulting highly enriched, weapons-grade uranium was then converted to low-enriched uranium and sold to the U.S. under a separate agreement for use in domestic nuclear reactors.

Pursuant to the Reduction Program, the Russians used a commercial agent, known as TENEX, to ship nuclear material to the U.S. TENEX was a subsidiary of Rosatom.² At one time, 10 percent of the electricity consumed in the U.S. was generated from nuclear material from former Russian warheads.³ These efforts are not merely a relic of the Cold War arms race. They have continued under President Barack Obama, who has called the possibility of terrorists acquiring nuclear weapons the "single biggest threat to U.S. security." A bipartisan bill is making its way through the Senate that will enhance the DOJ's ability to combat nuclear terrorism.⁴

In late 2014, the DOJ announced the unsealing of complaints in the District of Maryland charging various individuals with participating in a bribery scheme involving the U.S. subsidiary of TENEX. According to the DOJ, from 2004 to 2014 the principal of a U.S. transport company paid almost \$2 million in kickbacks to Vadim Mikerin, a TENEX executive, in return for \$33 million in contracts to transport nuclear material from Russia to the U.S. Mikerin is a Russian national in the U.S. on a visa who oversaw contracts to ship nuclear material. The bribes were concealed through shell corporations, sham agreements and a middleman who was also charged—the traditional means and instrumentalities of money laundering. Rosatom, for its part, suggested that the charges were politically motivated.⁵

Interestingly, court filings indicate that the government first tried to flip Mikerin and turn him into a cooperating witness. On the morning

of Oct. 29, 2014, Mikerin was in his office in Chevy Chase, Md., and received a call claiming that his car alarm was going off. He went outside to check, and was then approached by two federal agents as he was about to return to his office. Mikerin agreed to go into a suite next to his office, which apparently had been converted by the agents into a “war room.” The office contained transmitters and recording equipment, and on the wall were photos of Mikerin and charts connecting him to corporations, Russian executives and Russian high-government officials. Mikerin was questioned for four hours and made incriminating statements, but also apparently suggested that he was considering cooperation.⁶

Ultimately, Mikerin did not cooperate and instead pleaded guilty to conspiracy to commit money laundering in violation of 18 U.S.C. § 371. On Dec. 15, 2015, Mikerin was sentenced to serve four years in prison and forfeit \$2 million. Daren Condrey, the principal of the U.S. firm that paid bribes to Mikerin, pleaded guilty to conspiring to violate the Foreign Corrupt Practices Act (15 U.S.C. §78dd-2) and to commit Wire Fraud (18 U.S.C. §1343) and is awaiting sentencing.

Although Mikerin’s case appears only to be about money, there is no telling what his cooperation might have revealed. Filings in his prosecution hint at a far larger scheme. For example, the DOJ argued against Mikerin’s release on bail by describing his father as a “former high ranking official” in Rosatom’s predecessor agency. The DOJ also made vague references to the involvement of unnamed Russian government officials, and argued that these individuals had a strong interest in getting Mikerin out of the U.S. to prevent his cooperation.⁷

Moreover, this is not the first time Rosatom officials have been accused of corruption. In 2005, Yevgeny Adamov, the former minister of Rosatom’s predecessor agency, was arrested in Switzerland on charges by the DOJ accusing him of diverting \$9 million that the U.S. Department of Energy gave to Russia to improve its nuclear security. The U.S. sought his extradition, but Russia then requested and succeeded in having him extradited to Russia. There, he was convicted of defrauding the Russian government and sentenced to five years in prison, but his sentence was almost immediately suspended by a higher court. Many commentators noted that Russia’s belated interest in prosecuting Adamov succeeded in keeping him—and his knowledge of the Russian nuclear complex—out of U.S. hands.⁸

Working With Other Countries

Although the DOJ can assist foreign authorities in investigating potentially catastrophic crimes like nuclear proliferation and terrorism, its ability to act overseas is limited and it must instead rely on sometimes underwhelming prosecutions by local authorities.

In October 2015, the media began describing sting operations carried out by local law enforcement authorities and the U.S. Federal Bureau

of Investigation in the former Soviet republic of Moldova.⁹ Over the past five years, Moldovan authorities have thwarted four attempts by criminal organizations with ties to Russia to sell nuclear material.

These sting operations have involved informants, undercover Moldovan officers and electronic surveillance. The last sting occurred in February 2015. Although one such operation resulted in confiscation of a sample of the element cesium that was not dangerously radioactive, a sample recovered from another operation turned out to be weapons-grade uranium.¹⁰

Troublingly, the Moldovan officials supervising the stings have repeatedly jumped the gun, arresting agents or middlemen as soon as a sample is produced. This has allowed the groups behind the deals—who presumably possess or have access to caches of nuclear material—to avoid arrest. These groups also typically operate

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in lawless, separatist regions that police cannot penetrate. Moreover, the individuals who are prosecuted receive short jail sentences and upon release return to smuggling.¹¹

Conclusion

Although the results of the stings in Moldova reveal the limitations on the DOJ’s ability to combat serious crimes occurring overseas, the Mikerin prosecution illustrates how the DOJ can try to chip away at the edges of these crimes without having to depend on unreliable foreign enforcement efforts. The Mikerin case also should serve as a warning to multinationals that schemes that appear on their face to be about money may actually be related to far more serious crimes. Moreover, the Mikerin case illustrates the lengths to which the DOJ will go to expand these investigations. Indeed, the Mikerin case is not the DOJ’s first success in using anti-corruption laws to prosecute more serious offenses. In recent years, the DOJ has also succeeded in using the FCPA to prosecute domestic and foreign corporations for bribes involving officials in international troublespots like Iran and Syria.¹²

These unilateral efforts will be needed, not just because of limitations on the DOJ’s ability to act overseas, but also because international cooperation on these serious issues is not guaranteed. For example, in December 2014 Russian officials surprised their U.S. counterparts by informing them that it was abandoning the Reduction

Program and refusing any further assistance in securing Russia’s stockpiles of weapons-grade nuclear material.¹³ The announcement came during a period of increasing tension between the U.S. and Russia that included Russia’s incursions into Ukraine. The nuclear cooperation had been expected to continue at least until 2018, but Russia’s announcement was a sudden and unexpected end to two decades of cooperation that involved billions of U.S. taxpayer dollars.

Russian officials explained their decision by saying that Russia could now secure its weapons grade material on its own. Let’s hope they’re right.



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2. Press Release, “Russian National and Three Others Charged in Kickback Scheme to Obtain Contracts to Transport Russian Nuclear Fuel to the U.S.,” Oct. 31, 2014, available at <https://www.fbi.gov/washingtondc/press-releases/2014/russian-national-and-three-others-charged-in-kickback-scheme-to-obtain-contracts-to-transport-russian-nuclear-fuel-to-the-u-s>.

3. Joel Schectman, “FBI Probes Suspected Bribery in Russian Uranium Sales to U.S.,” Wall Street Journal, April 30, 2015, available at <http://www.wsj.com/articles/fbi-probes-suspected-bribery-in-russian-uranium-sales-to-u-s-1430427559?cb=logged0.8773222895496048>.

4. BBC News, “US President Barack Obama warns of nuclear terrorism,” April 12, 2010, available at <http://news.bbc.co.uk/2/hi/8614695.stm>. See Press Release, “Bipartisan Legislation to Combat Nuclear Terrorism and Proliferation Clears Committee,” Dec. 11, 2015, available at <http://www.grassley.senate.gov/news/news-releases/bipartisan-legislation-combat-nuclear-terrorism-and-proliferation-clears>.

5. “US arrests head of Russian nuclear subsidiary on extortion & conspiracy charges,” Russia Today, Nov. 1, 2014, available at <http://www.rt.com/news/201451-russian-uranium-mikerin-tenam>.

6. See Memo in Support of Motion to Suppress Statements, *USA v. Mikerin*, 18 CR 529 (D. Md.), ECF Doc. No. 46-1; Government’s Opposition to Motion to Suppress Statements, *USA v. Mikerin*, 18 CR 529 (D. Md.), ECF Doc. No. 52.

7. Response in Opposition by USA as to Vadim Mikerin, *USA v. Mikerin*, 18 CR 529 (D. Md.), ECF Doc. No. 37.

8. See, e.g., Peter Finn, “Ex-Russian official avoids US extradition,” Washington Post, Dec. 20, 2005, available at http://www.boston.com/news/world/europe/articles/2005/12/30/ex_russian_official_avoids_us_extradition/; Michael Weiss, “Corruption and Cover-Up in the Kremlin,” The Atlantic, Jan. 29, 2013, available at <http://www.theatlantic.com/international/archive/2013/01/corruption-and-cover-up-in-the-kremlin-the-anatoly-serdyukov-case/272622/>.

9. Desmond Butler and Vadim Ghirda, “AP Investigation: Nuclear black market seeks IS extremists,” AP, Oct. 7, 2015, available at <http://bigstory.ap.org/article/9f77a1c7001f4cf3baeb28990b0d92eb/ap-investigation-nuclear-smugglers-sought-terrorist-buyers>.

10. *Id.*

11. *Id.*

12. For example, in 2013 French oil giant Total S.A. paid a whopping \$398 million in disgorgement over FCPA violations involving its business in Iran. See *USA v. Total S.A.*, No. 13 CR 239 (E.D. Va.).

13. Bryan Bender, “Russia ends US nuclear security alliance,” Boston Globe, Jan. 19, 2015, available at <http://www.bostonglobe.com/news/nation/2015/01/19/after-two-decades-russia-nuclear-security-cooperation-becomes-casualty-deteriorating-relations/5nh8NbtjttUE8UqVWFloL/story.html>.