Law enforcement in Russia: “A complete lack of respect for the law?”

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Law enforcement practices in Russia

- What is the rule of law?
- Why enforcing the rules?
- Why do actors obey the rule?
- What kind of sanctions and styles are used to enforce environmental regulations?
- What is meant with ‘informal practices’ in Russian society?
- How can we understand enforcement practices from a Russian perspective?
Rule of law:

‘principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards’ (UN Security Council 2004).
Why enforcing the rules?

- Enforcement of the written rules is necessary to prevent the legal system from being undermined;
- enforcement agencies interact between those who design the rules and those subject to these rules;
- that businesses or individuals do not gain an unfair advantage over those who comply with the rules.
Why do actors obey the rules?

Compliance can be an outcome of rational calculation (instrumental approach); recognition of the legitimacy of the law (normative approach).

Trust and respect for the rules are essential for people’s attitude towards the law. The law cannot function if it influences people **only** by manipulating rewards and costs.
Enforcement of environmental regulations should be distinguished from other enforcement practices:

1. Regulations are frequently based on international agreements;
2. The offender is potentially knowable;
3. Conflicts are rarely fought out in public.
4. Sanctions affect the relationship between authorities and offenders and may influence the willingness of society (and politicians) to develop, defend and enforce environmental regulations.

Two types of enforcement styles: ‘penalty style’ and ‘compliance style.’ Examples of sanctions are: Fines, regulatory pressure, fixed product standards, license suspension (or withdrawal) and statutory notices.
The relation between law and Russian society

- The formal framework can be extremely complicated.
- Understand that there is a gap between the written rules and behavior in practice;
- As a result, a set of informal practices have been developed over time (blat, selective enforcement of the law, patronage etc.)
- Regulatory system is influenced by changing ideologies and political developments.
- Informal practices can be necessary: to restore justice, to protect ones interests, to comply with the law or to get things done).
Informal practices in Russian society

.......... disregard the formal written rules or its spirit (double-edged relationship),

.......... suggest a low demand for law,

.......... suggest a lack of respect for the law,

.......... law and justice are not necessarily the same,

.......... are beneficial to a particular group of people (insiders)

.......... selective enforcement of the written rules is a good example.
Selective enforcement of the rules…. 

…….. is also related to the inability of the state bureaucracy to fulfill its requirements, 
…….. violates the spirit of the law, 
…….. is a tool to influence outcomes 
…….. is in the literature also known as ’suspended punishment,’ and ’administrative resource.’ 
…….. creating and enforcing the law are two different things. 
…….. is all this uniquely Russian?

Example of selective enforcement practices

Conflict between Shell and the Russian authorities over the development of an oil and gas project at Sakhalin-II (2005-2007).
The development of Sakhalin-II

• This conflict illustrates the relationship between IOCs and the Russian state in the petroleum sector at a time when oil prices were increasing (2005-2007).
• Royal Dutch Shell controlled the majority of the shares of the project until December 2007.
• Conflicting interests: Shell raised the development costs whereas the Russian government preferred to renegotiate the agreement.
• Inspections at production sites by regulatory agencies increased gradually, ending in a public fight between both actors, also because Shell was not able to comply with the requirements of the formal legal system.
• Shell started the conflict with a controlling stake but ended up as ‘technical advisor’ after selling part of its shares to the new majority owner, Gazprom.
Example of selective enforcement practices

- Shell could not comply with the written regulations.

‘Under Article 24 of the Federal law No 52-FZ on wildlife, April 1995, activities that cause death, reduction in population or disturb the national habitats of rare or endangered species are prohibited’


- Regulatory pressure started not before the second half of 2006 (operations started in 2001).

- Motivations were ’informal’ (strengthening state control in petroleum sector) and – one could argue – ’justified.’
Russia’s legal system

- Bureaucracy
- Enforcement can be selective
- Complicated (incoherent, inconsistent)
- Non-compliance
- Law and justice are not necessarily the same
- Informality
- Low demand