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Treating Smugglers as Spies

By Andrei Soldatov

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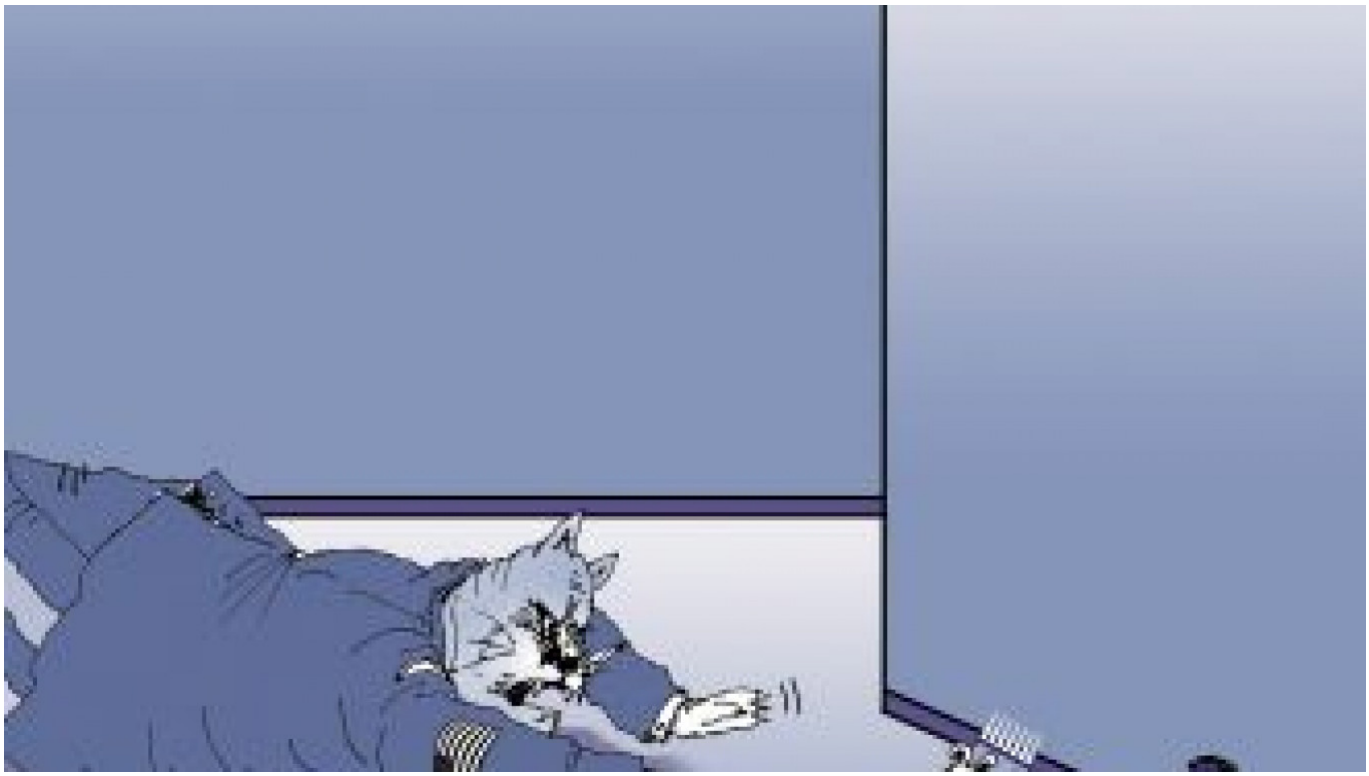

The scandal last week surrounding the export of U.S. dual-use technology to Russia is not a spy case in either form or content. The risky but lucrative business of illegally exporting U.S. electronics has been around since the Coordinating Committee for Multilateral Export Controls set restrictions prohibiting shipments of advanced, sensitive technologies to the Soviet Union and other Warsaw Pact countries. Many of the first Russians to make fortunes in the 1990s did so by finding unscrupulous U.S. or Western European business partners early enough in the game who were ready to risk smuggling electronics through Algeria and other countries.

This trade has always been a criminal offense, but it was never considered true espionage. That is why the current incident differs markedly from the case of Russian sleeper agents who reported directly to Russia's foreign intelligence and were arrested in the U.S. in 2010. Those illegals, whose mission was to "infiltrate" influential U.S. institutions, accomplished virtually nothing after working more than a decade.

By contrast, the U.S.-based employees working for Arc Electronics were most likely acting independently. They are accused of exporting an estimated $50 million worth of sensitive

technology to Russia between 2008 and 2012.

Judging by the text of the FBI statement, Arc Electronics was organized by 11 former Russian nationals, many of whom had gained U.S. citizenship, under the leadership of Alexander Fishenko, a native of Kazakhstan. The Houston-based company had been transporting microelectronics to Russia since 2002.

Since 2008, the group started focusing on procuring dual-use technologies for Russia's Defense Ministry through its sister firm in Moscow, Apex, which is a certified representative of the Defense Ministry and the Federal Security Service, or FSB. The FBI reports that it has a letter from the FSB complaining about the poor performance of microchips it had received and demanding their replacement. To circumvent U.S. restrictions on such exports, Arc Electronics allegedly falsely listed its end users as fishing boat and traffic light manufacturers.

Fishenko and his partners ran a major microelectronics supply business that included shipments of analog-to-digital converters, static random-access memory chips, micro-controllers and microprocessors. Washington claims that all of this equipment was used by Russian authorities for radar, surveillance equipment, missile guidance systems and other military purposes. Russia is an active buyer of these products because it does not produce any of these technologies itself.

In July 2010, a similar case surfaced when Anna Fermanova, a U.S. citizen originally from Latvia, was arrested in a New York airport for attempting to export night vision equipment to Russia. The biggest difference, however, is that she had no contractual relationships with Russian agencies. She was a small operator looking to sell U.S. equipment to the first interested Russian buyer. Thus, Fermanova received a fairly light sentence — four months in prison and three years of probation.

But Fishenko and his colleagues are much bigger players and could face decades behind bars if convicted.

In addition, the FBI classified Fishenko and his colleagues as "unregistered agents of the Russian government in the United States." This could very well be a response to a recent Russian law requiring foreign-funded nongovernmental organizations that are engaged in "political activities" to register as "foreign agents" with the Justice Ministry. United Russia deputies said they based the foreign agent law on the U.S. Foreign Agents Registration Act, or FARA, from 1938. U.S. officials tried to explain to Russian lawmakers that a "foreign agent" under FARA applies to lobbying and other commercial activities conducted in the United States by official representatives of foreign governments. Now, with the Fishenko case, the United States has a fresh example to show Russia what FARA is all about.

In the end, Fishenko and his accomplices are accused of violating laws on exporting dual-use technology. But threatening them with severe prison sentences as if they were spies seems a bit strange. It is almost as if it were Washington's turn to come up with its own "asymmetric response" to Moscow.

Andrei Soldatov is an intelligence analyst at Agentura.ru and co-author of "The New Nobility: The Restoration of Russia's Security State" and "The Enduring Legacy of the KGB."

The views expressed in opinion pieces do not necessarily reflect the position of The Moscow Times.

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