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Russia's Wild East: Ecological Deterioration and the Rule of Law in Siberia

PAUL STANTON KIBEL*

"[L]et the fragile green beast of Siberia be dressed in the cement armour of cities. Let the [forest] be burned and felled, let the steppes be trampled."¹

I. INTRODUCTION

The collapse of the U.S.S.R. was both a consequence of, and a catalyst to, the ecological awareness of its citizens.² The introduction of Perestroika in the late 1980s was accompanied by the emergence of a vocal and politically potent environmental movement.³ Citizens began to discuss the environmental problems afflicting their country, and these discussions led eventually to criticism and protest.⁴ These criticisms and protests addressed a broad range of issues, including air and water pollution, deforestation, soil conservation, nuclear energy and public access to information.⁵ It is clear that the environment served as an important focal point for citizens working to reform, or in some cases dismantle, the political structure of the U.S.S.R.⁶

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1. Vladimir Zazubrin, Soviet writer, 1933. The statement was made in praise of Stalin's program for economic and industrial modernization, *quoted in* Fred Pearce, *The Scandal of Siberia: Exploitation of Energy Resources*, NEW SCIENTIST, Nov. 27, 1993, at 28 [hereinafter Pearce].

2. Brian Zimble, *Legal Remedies Address a Catastrophic Situation: The Russian Law on Protection of the Environment*, CIS ENVTL. WATCH, Fall 1992, at 41, 41 [hereinafter Zimble].

3. Nicholas A. Robinson, *Soviet Environmental Law and Perestroika*, ENVTL. POL'Y & L. 224, 225 (1988) [hereinafter Robinson]; *see also* Douglas Stanglin, *Toxic Wasteland*, U.S. NEWS & WORLD REPORT, April 13, 1992, at 40 [hereinafter Stanglin]; Eugene Lisitsyn, *Environmental Law and Management in the U.S.S.R.: A Reflection on Contemporary Reforms*, 17 REV. OF SOCIALIST L. 125, 126 (1991) [hereinafter Lisitsyn].

4. *See generally* Stanglin, *supra* note 3; *see also* Lisitsyn, *supra* note 3; Robinson, *supra* note 3.

5. *How Russia's Revolution Imperils Forests*, ORLANDO SENTINEL TRIB., May 10, 1992, at G4; Richard Brandt, *Soviet Environment Slips Down the Agenda*, SCIENCE, Jan. 3, 1992, at 22, 22 [hereinafter Brandt].

6. Vladimir Kotov & Elena Nikitina, *Russia in Transition: Obstacles to Environmental Protection*, ENV'T, Dec. 1993, at 11, 12 [hereinafter Kotov & Nikitina].

The disintegration of the U.S.S.R. has resulted in a transfer of primary political power to the new independent republics.⁷ The Soviet disintegration has also resulted in an expansion of civil liberties, particularly those of free speech and free press.⁸ This decentralization and liberalization would appear to provide an excellent foundation for addressing the consequences and causes of environmental degradation. Such a response, however, has not yet been forthcoming.

Despite the emergence of new independent states, and despite the adoption of new laws, the environmental deterioration of the former Soviet Union has continued. This deterioration is particularly evident in Siberia and the far eastern regions of Russia.⁹ When Russia achieved independence in 1991, it obtained control over the vast forests, rivers and natural resources of Siberia. Because of its valuable timber and petroleum reserves, the Soviet Union had devoted much energy to the extraction of these resources.¹⁰ This devotion, however, left Siberia with a host of environmental problems.¹¹ With its forests and wildlife disappearing and its air and water quality standards declining, many looked to the new political regime to improve these conditions.¹²

Although there are now greater environmental protections on the Russian law books, these protections have so far done little to improve ecological conditions in Siberia. This article examines how the dramatic political and legal changes in Russia have affected Siberian nature conservation and environmental protection. More specifically, it seeks to explain why, despite the significant restructuring of political power and the increasingly open discussion of ecological issues, the Siberian environment continues to deteriorate. The article begins with an analysis of existing ecological and economic conditions in Siberia. It then considers how the legal legacy of the USSR has hindered recent efforts to protect Siberian nature. Lastly,

7. Sergei Vinogradov, *Russian Federation Update*, Y.B. INT'L ENVTL. L. 412-13 (1992) [hereinafter Vinogradov]; see also C.W. Gusewelle, *Siberia on the Brink*, AM. FORESTS, May 1992, at 17, 17 [hereinafter Gusewelle];

8. Zimbler, *supra* note 2.

9. The term "Siberia" is used to indicate the entire region of the Russian Republic that lies east of the Ural Mountains. This definition, while convenient for this article's purposes, is not geographically precise. The Pacific Coast of Russia, which includes the regional governments of Primorye, Khabarovskiy, Magadanski, Kamchatskaya, Koryakskiy and Chukotskiy, is generally referred to as the Russian Far East. The Russian Far East is usually considered geographically separate from Siberia. See generally Armin Rosencranz and Antony Scott, *Siberia, Environmentalism, and Problems of Environmental Protection*, 14 HASTINGS INT'L & COMP. L. REV. 929 (1991) [hereinafter Rosencranz & Scott]; see also Interview with David Gordon, Co-Director of the Siberian Forest Protection Project for the Pacific Environment and Resources Center, in Sausalito, Cal. (Feb. 27, 1994) [hereinafter Interview with Gordon].

10. Stanglin, *supra* note 3, at 40; Pearce, *supra* note 1, at 28.

11. Kotov & Nikitina, *supra* note 6, at 12.

12. Brandt, *supra* note 5, at 22.

specific legal strategies for improving Siberian nature conservation are presented and assessed.

II. ECOLOGICAL CONDITIONS IN SIBERIA

Siberia is endowed with natural resources of significant ecological and economic importance. In assessing the present condition of the Siberian environment, it is necessary to keep in mind the relation between the *natural* and the *financial*. It is only through this co-mingled assessment that an accurate portrait of the Siberian landscape can be presented.

Siberia contains one-fifth of the earth's forest cover, and one-half of the earth's coniferous forests.¹³ These forests cover an area roughly the size of the continental United States.¹⁴ They serve a number of critical ecological functions. First, they remove huge quantities of carbon, perhaps as much as forty billion tons, from the atmosphere.¹⁵ The Siberian forests, therefore, play an important role in the maintenance of the world's climate balance. Second, they are habitat for several threatened species, such as the Siberian Tiger, the Far Eastern Leopard and the Far Eastern Crane.¹⁶ The survival of these species depends in large part on the conservation of their natural forest habitat. Third, they provide cover for watersheds and prevent soil erosion, which adversely impacts water quality.¹⁷ These watershed and anti-erosion functions are necessary to ensure adequate river flows as well as the health of fisheries and potability of drinking water.¹⁸

In spite of their ecological significance, the Siberian forests have been targeted for intensive logging by domestic and foreign timber companies.¹⁹ These companies employ cutting techniques that violate accepted sustainable forestry practices and rely on ecologically destructive equipment and technology.²⁰ In the Kirzhinsky region of Siberia, clear-cutting of forests has caused widespread soil erosion and siltation.²¹ As a result, thirty rivers in the region have filled in and essentially disappeared.²² The use of out-dated logging and transportation methods results in the vast majority of cut wood

13. Rosencranz & Scott *supra* note 9, at 929.

14. *Id.*

15. Julia Levin, *Russian Forest Laws — Scant Protection During Troubled Times*, 19 *ECOLOGY L. Q.* 685, 688 (1992) [hereinafter Levin].

16. David Gordon, *Siberian Forests Update*, *Y.B. INT'L ENVTL. L.* (1993), at 1 [hereinafter Gordon]; *see also* Pearce, *supra* note 1.

17. Interview with Andrei Borsuk, lawyer with the International Ecological Union in Vladivostok, Russia, in Sausalito, Cal. (Feb. 23, 1994) [hereinafter Interview with Borsuk].

18. *Id.*; Dorinda Elliott, *Wasteland: The Race to Exploit Russia's Far East Frontier*, *NEWSWEEK*, July 26, 1993, at 27 [hereinafter Elliott].

19. Gordon, *supra* note 16, at 4.

20. *Id.*

21. *Id.* at 2.

22. *Id.*

never making it to the processing plants.²³ Current estimates indicate that close to fifty percent of the wood cut by the Russian timber industry is simply left to rot.²⁴

In addition to the direct consequences of timber cutting, the Siberian forests are also severely impacted by pollution from resource extraction industries and hydroelectric plants.²⁵ The condition of the forests is further compounded by the harsh climatic conditions in Siberia, which make for low metabolism and thus slow tree recovery.²⁶ The result has been an accelerated decline in both the vitality and coverage of the Siberian forests, and an accompanying decline in global carbon absorption, endangered species' habitat, soil conservation, and water quality.²⁷

Beyond its valuable forests, Siberia also contains large deposits of minerals and petroleum resources. Seventy-five percent of all Russian silver is obtained through the production of polymetallic ores in East Siberia.²⁸ The region supplies a significant portion of the nation's gold and nickel.²⁹ Siberia is also home to some of the largest oil, natural gas, and coal reserves in the world.³⁰ In the former Soviet Union, extraction and processing of these mineral and energy resources was a top economic priority.³¹ Roads and railroads were built to obtain and transport the resources.³² Factories were constructed to process and store the resources.³³

As a result of outdated technology and poor economic planning, these industries have devastated much of the Siberian environment. Oil invades the lakes and rivers and seeps into underground aquifers.³⁴ Gas flares and black clouds from burning waste pits cover the landscape, raining poisonous soot on the surrounding trees and plants.³⁵ The forests are littered with abandoned machinery and rusting pipes.³⁶ The pollution and ecological damage caused by the Siberian mineral and petroleum industries affect

23. *Id.*

24. *Id.*

25. Pearce, *supra* note 1.

26. *Id.* at 30.

27. *Id.*; Levin, *supra* note 15, at 688.

28. Richard Levine, *Countries of the Former U.S.S.R.*, MINING ANN. REV., July 1993, at 213 [hereinafter Levine].

29. *Id.* at 211; Elliott, *supra* note 18, at 27.

30. *See generally* Pearce, *supra* note 1.

31. Kotov & Nikitina, *supra* note 6, at 12. ("The centrally planned socialist system literally devoured natural resources and the environment, and this plundering took place on an ever-larger scale. One of the basic goals of the communist regime was a constant increase in industrial production . . .").

32. *See* Pearce, *supra* note 1, at 28.

33. *Id.*

34. *Id.* at 31.

35. *Id.* at 28.

36. *Id.* at 29.

more than lakes and plants. They affect the health of Siberia's human residents as well.³⁷ In industrial Siberian cities such as Bratsk and Noyabr'sk, air and water pollution have resulted in severe health problems, including increased cancer rates and respiratory disorders among children.³⁸

III. ECONOMIC CONDITIONS IN SIBERIA

Although Siberia has long been a source of valuable timber, mineral and petroleum resources, these resources have generated little to improve its citizens' standard of living. This failure is due in large part to the political and geographic dynamics of the former Soviet Union. While the resources may have been located in the Siberian east, the political and economic power remained in the west, in Moscow.³⁹ Under the highly-centralized U.S.S.R. regime, the planning and funding for Siberian resource exploitation emanated from the political center.⁴⁰ It is therefore not surprising that the profits generated from these investments returned to the west, to the center of economic and political power.⁴¹

The collapse of the Soviet Union has loosened Moscow's control over Siberia's natural resources.⁴² This loosening, or disintegration, of Moscow-based control has created a considerable vacuum of political power in Siberia.⁴³ In this vacuum, local and regional governments have asserted control over natural resources.⁴⁴ Given the absence of clear laws governing the privatization of formerly state-owned land, these local and regional governments have been dispensing land and resource rights in a legal and regulatory void.⁴⁵ This confusion over property rights, privatization, and the power of regional governments has in turn led to the rise of, what local citizens call the "timber mafia" and other corrupt natural resource syndicates.⁴⁶ Many of these resource syndicates have close ties to, or are even

37. Carey Goldberg, *Flaring Siberia Gas: Torches Light Way to Eco-Disaster*, L.A. TIMES, July 25, 1993, at 1.

38. See generally D.J. PETERSEN, TROUBLED LANDS: THE LEGACY OF SOVIET ENVIRONMENTAL DESTRUCTION 240-42 (1993); Kathleen Hunt, *Death and Life in a Company Town*, L.A. TIMES MAG., July 11, 1993, at 12; Pearce, *supra* note 1.

39. Interview with Borsuk, *supra* note 17.

40. *Id.*

41. *Id.*

42. Gordon, *supra* note 16, at 2-3; Elliott, *supra* note 18, at 28.

43. Kotov & Nikitina, *supra* note 6, at 13. ("The totalitarian state has been demolished, but its destruction has been accompanied by the disappearance of government authority as such.")

44. *Id.*

45. *Id.* ("They trade on their control over resource use without any restrictions and violate environmental norms, apparently without accountability either to the national government or to the local population.")

46. Gordon, *supra* note 16, at 3.

synonymous with, local and regional governments.⁴⁷ The majority of profits generated by these groups do not return to the local Siberian economy.⁴⁸ It is widely presumed that they are transferred to protected foreign bank accounts.⁴⁹ Siberians thus find themselves fighting a familiar battle. Even with the collapse of the U.S.S.R., the economic benefits of its resources continue to flow outside the region.⁵⁰

The liberalization of foreign trade in Russia has added a global dimension to this economic pattern. The planning and funding for Siberian resource exploitation now also comes from foreign corporations, such as Hyundai of South Korea.⁵¹ The fundamental priority of these corporations is to extract and transport Siberian natural resources as inexpensively as possible.⁵² This priority means that wages and environmental standards remain low. It also means that most of the profits will be returning to the foreign corporations and shareholders, not the local Siberian economy.⁵³

Siberia's economic condition has also been adversely impacted by Russia's recent program of demilitarization.⁵⁴ Just as in the United States, military spending in Russia has decreased since August 1991, and numerous military bases have closed.⁵⁵ Under the former Soviet Union, Vladivostock served as the home of the Pacific Naval Fleet.⁵⁶ As part of the program of national demilitarization, the Vladivostock naval base was drastically downsized, and several other Siberian military bases were closed.⁵⁷ Converting from military to civilian industries has added to Siberia's economic woes.⁵⁸

The dire economic situation of most Siberians is closely related to the continuing deterioration of the Siberian environment. The flow of profits outside the region and the economic displacement caused by military conversion have resulted in great hardships.⁵⁹ These hardships, if not addressed, threaten to overwhelm efforts at ecological reform.⁶⁰ As Kenneth Gooding of London's *Financial Times* observed, in the present economic climate, Siberians "must often choose between suffering from environmental problems or losing jobs and their ability to feed their

47. *Id.*

48. Interview with Gordon *supra* note 9.

49. *Id.*

50. *Id.*

51. *Id.*; Kotov & Nikitina, *supra* note 6, at 14.

52. Interview with Gordon, *supra* note 9.

53. *Id.*

54. Interview with Borsuk, *supra* note 17.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. Gusewelle, *supra* note 7; Kotov & Nikitina, *supra* note 6, at 17-19.

60. *Id.*

families.”⁶¹ Efforts to improve ecological conditions in Siberia are therefore inevitably linked to improving the economic condition of the Siberian people.

IV. THE LEGAL LEGACY OF THE U.S.S.R.

Seventy-four years of Soviet rule have left Siberia, and Russia as a whole, with a problematic legal inheritance. This inheritance is problematic because it lacks many of the legal, political and philosophical traditions that would help further the establishment and operation of a modern democracy.⁶² Because any ecological reform will take place in the larger context of democratic and political reform, the absence of these traditions is a considerable obstacle to improving environmental conditions in Siberia.⁶³ In particular, there are three legal legacies of the Soviet era that hinder efforts at ecological reform — the disparity between law on the books and law in practice; the absence of an independent judiciary with adequate enforcement powers; and the absence of ecological considerations in Soviet economic development.

A. THE DISPARITY BETWEEN LAW ON THE BOOKS AND LAW IN PRACTICE

In most modern democracies, there exists a basic political assumption that after a law is enacted, the law will be implemented.⁶⁴ It makes little difference whether the law is unfair, poorly drafted or serves particular interests. There remains a basic belief that the government will give effect to the provisions of the law.⁶⁵ Because of experiences under the former Soviet regime, this underlying expectation is not part of the Russian legal tradition.⁶⁶

In the former Soviet Union, laws were routinely adopted and then ignored.⁶⁷ Sometimes the lack of implementation was a product of political intent, other times it was a result of inadequate human or administrative resources.⁶⁸ Regardless of the reasons for the lack of implementation, the end result was a situation where law in practice bore little relation to law on the books. Much of the U.S.S.R. was governed by what one commentator

61. Kenneth Gooding, *Bratsk Finds Going Tough in Real World — A Town That Depends Almost Entirely on its Outdated Smelter*, FIN. TIMES, Oct. 21, 1993, at 34 [hereinafter Gooding].

62. Kevin Block, *Russian Law: Does It Matter in the 'Wild East'?*, RUSSIAN FAR E. UPDATE, January 1994, at 7, 7 [hereinafter Block].

63. Robinson, *supra* note 3, at 224.

64. Maimon Schwarzschild, *Variations on an Enigma: Law in Practice and Law on the Books in the U.S.S.R.*, 90 HARV. L. REV. 685, 686 (1986) [hereinafter Schwarzschild].

65. *Id.* at 687.

66. Block, *supra* note 62, at 7.

67. *Id.*

68. *Id.*

called "lawlessness law," wherein "who you knew was more important than what the rules said, and where most rules were not really 'rules' at all, but guidelines for action, subject to endless variation when applied in practice."⁶⁹ This low regard for the written rule of law was not surprisingly accompanied by a lack of respect for the legal profession.⁷⁰ In the U.S.S.R., the prestige of and regard for lawyers was "minimal."⁷¹

This skepticism regarding the operative effect of the written law suggests that passing new environmental legislation will not be enough. Special efforts will have to be made to ensure that the provisions enacted are indeed implemented, or at least capable of being implemented. If not, the tradition of "lawlessness law" will unfortunately be carried over into post-Soviet Russia.

B. THE ABSENCE OF AN INDEPENDENT JUDICIARY

An independent judiciary is an essential political component of almost all modern democracies. This is particularly true of the United States and other countries whose legal systems derive from the English common law. Under the common law system, courts and judges retain considerable autonomy and law-making power. Even in countries which operate under the civil law system, however, such as France and Germany, courts play an important role in the application of law.⁷² The courts in the civil law system still provide a political forum for both the government and private parties to assert legal violations.⁷³ Moreover, they possess the necessary enforcement powers and political standing to ensure compliance with judicial determinations.⁷⁴

In the former Soviet Union, the judiciary never secured the status, autonomy or enforcement powers necessary to play a meaningful independent role.⁷⁵ Judges were appointed or removed at the absolute discretion of Communist Party leaders.⁷⁶ Standing to sue was routinely denied to citizens challenging the actions of state officials.⁷⁷ Judicial determinations conflicting

69. *Id.* at 8.

70. Lisitsyn, *supra* note 3, at 136.

71. *Id.*

72. Interview with Stefan Klinski, Visiting German Law Fellow at the Pacific Environment and Resources Center, in Sausalito, Cal. (Feb. 26, 1994).

73. *Id.*

74. *Id.*

75. Tatiana Zaharchenko, *The Environmental Movement and Ecological Law in the Soviet Union: The Process of Transformation*, 17 *ECOLOGY L.Q.* 455, 470 (1990) [hereinafter Zaharchenko] ("Historically, the weakest link in the Soviet Union's system of legal protection for the environment has been law enforcement. The main obstacle has been the absence of effective judicial mechanisms to force government bodies and polluting enterprises to comply with existing laws.").

76. Interview with Borsuk, *supra* note 17.

77. Zaharchenko, *supra* note 75, at 471. ("A citizen with a complaint against a decision or action made collectively — and most decisions made by local authorities are approved collectively — had

with other governmental priorities were simply not enforced.⁷⁸ Given the de minimis role played by the courts in the former U.S.S.R., the post-Soviet judiciary in Russia begins as a relatively weak institution.⁷⁹ Although the political regime has changed, the courts are still widely perceived as ineffectual.⁸⁰

This perception of the judiciary adversely affects the implementation of Russian environmental laws.⁸¹ Although prohibitions and guarantees exist on paper, the courts must provide a legal forum when these prohibitions or guarantees are violated. If the courts cannot, or will not, provide this forum, the judiciary will retain its low status, and the disparity between the *written* law and the *actual* law will continue.

C. THE ABSENCE OF ECOLOGICAL CONSIDERATIONS IN SOVIET ECONOMIC DEVELOPMENT

Beginning with Stalin in the late 1920's, the Soviet Union made industrial and agricultural modernization its top economic priority.⁸² The central government set specific regional goals, and local officials were responsible for ensuring that these targets were met.⁸³ The targets commonly set forth manufacturing quotas or levels of agricultural yield.⁸⁴ Failure to achieve these levels of production and output were often viewed as crimes against the state.⁸⁵ As such, local officials had significant incentives to make certain that targets were met.

These economic targets often failed to account for ecological limitations. Forests were felled at rates that did not allow for regrowth.⁸⁶ Factories were constructed with little or no pollution controls, rendering air and water poisonous.⁸⁷ Intensive agricultural practices were employed which outstripped the topsoil's regenerative capacity.⁸⁸ Many Soviet scientists and politicians were aware that the economic targets were incompatible with ecological sustainability.⁸⁹ The political climate of the U.S.S.R., however,

no legal recourse.”).

78. Interview with Borsuk, *supra* note 17.

79. Alex Deghan, *A Criticism of the New Mechanisms for Environmental Protection in the Russian Federation*, 19 REV. OF CENT. AND E. EUR. L. 661, 661 (1993) [hereinafter Deghan].

80. *Id.*

81. Interview with Borsuk, *supra* note 17.

82. MURRAY FESHBACH & ALFRED FRIENDLY JR., *ECOCIDE IN THE U.S.S.R.: HEALTH AND NATURE UNDER SIEGE* 31 (1992) [hereinafter Feshbach & Friendly].

83. Kotov & Nikitina, *supra* note 6, at 13.

84. Interview with Borsuk, *supra* note 17.

85. Feshbach & Friendly, *supra* note 82, at 43.

86. Rosencranz & Scott, *supra* note 9, at 938.

87. Feshbach & Friendly, *supra* note 82, at 91-94.

88. *Id.* at 49-56.

89. *Id.* at 31-33.

made open discussion of this incompatibility a potentially dangerous undertaking.⁹⁰

Under the U.S.S.R. regime, citizens and regional officials were given little opportunity to incorporate environmental considerations into economic decisions. They were also prohibited from openly discussing the ecological consequences of these decisions. As Russia moves toward a more open economic and political system, and more sustainable development, the Soviet lessons of complacency and silence will have to be unlearned.

V. RECENT LEGAL EFFORTS TO PROTECT SIBERIAN NATURE

As discussed in the earlier section on economic conditions, the collapse of the Soviet Union created a political vacuum in Siberia. Moreover, as noted in the previous section on the U.S.S.R.'s legal legacy, Russians are accustomed to law in practice bearing little relation to law on the books. This chaos and lack of confidence in existing written law underlies present legal efforts to protect Siberian nature. An understanding of federal and regional laws therefore requires that one look beyond the legislative texts and consider how these laws operate in practice.

A. FEDERAL EFFORTS TO PROTECT SIBERIAN NATURE

Since declaring its independence in 1991, Russia has adopted three laws that bear heavily on ecological and conservation issues, the 1991 Land Code of the Russian Republic (Land Code),⁹¹ the 1991 Federal Act on Protection of the Environment (Federal Environment Law),⁹² and the 1993 Russian Forestry Act (Forestry Act).⁹³ These laws are considered below.

(1) 1991 Land Code

The 1991 Land Code represents an attempt to move away from the central government's monopoly of land ownership under the former Soviet Union. The Code has been characterized by one commentator as the "rebirth of a dormant concept of private ownership."⁹⁴ Under the new code, land is categorized according to the purpose of the activity performed on the land: (1) farmland; (2) populated land (cities, towns, villages); (3) land

90. *Id.*

91. *Zemelnii Kodeks, RSFSR* [The Land Code of the RSFSR], ZK RSFSR (1991), *published in* Land Code of the RSFSR (1991) [hereinafter Land Code].

92. The Federal Act on the Protection of the Environment, GK RSFSR, Law No. 2060-1 (1991) [hereinafter Federal Environment Act].

93. Russian Forestry Act, § 8.01.5, art. 5 (1993) [hereinafter Forestry Act].

94. Olga Floroff & Susan W. Teifenbrun, *Land Ownership in the Russian Federation: Laws and Obstacles*, 37 ST. LOUIS U.L.J. 235, 235 (1993) [hereinafter Floroff & Teifenbrun].

for industrial purposes, such as transportation, communication, energy, and defense; (4) recreational and conservation land; (5) forest land; (6) water resources land; and (7) reserved land.⁹⁵ These distinctions, or categories, are relevant in that they determine the extent to which the federal government retains control over the land, as well as the degree to which privatization and privatized use is permitted.

The Land Code, and subsequent Presidential Decrees clarifying the Land Code,⁹⁶ provide for the establishment of local Councils of People's Deputies.⁹⁷ These local councils are in charge of granting land parcels.⁹⁸ They are empowered to grant ownership, an inheritable life-long possession, a permanent or temporary use, or a lease on the land.⁹⁹ The local land councils' disbursement powers are limited by the type, or category of land in question. If the land involved is to be used for agriculture or industry, then the land councils have virtually absolute discretion.¹⁰⁰ If, however, the land is to be used for recreation or conservation purposes, then the local land councils may only allow "limited" business activity.¹⁰¹ Moreover, these lands may not be disbursed in a manner that adversely affects these primary recreation and conservation purposes.¹⁰²

The land disbursement scheme established under the 1991 Land Code has proven faulty in practice for two reasons. First, the composition and selection of the local land councils was not clearly set forth in the law. This has resulted in political uncertainty as to who may sit on the councils, and competing claims of legitimacy between different local councils.¹⁰³ Second, land is categorized not so much by its nature as by its use.¹⁰⁴ Local councils

95. Land Code, *supra* note 91, art. 4.

96. Decree #301 of the President of Russian Federation on Sale of Land Parcels to Individuals and Legal Entities During Privatization of State and Municipal Enterprises, *Rossiiskaya Gazeta*, Mar. 31, 1992 at 2 [hereinafter Decree # 301]; Decree # 631 of the President of Russian Federation on Ratification of the Order of Sale of Land Parcels During Privatization of State and Municipal Enterprises, Their Enlargement and Additional Constructions as Well as Land Parcels Provided to Citizens and Their Conglomerates for Entrepreneurial Activity, *Rossiiskaya Gazeta*, June 18, 1992 at 2 [hereinafter Decree # 631].

97. Land Code, arts. 6, 23.

98. *Id.*

99. *Id.*

100. *Id.*, art. 39, ¶ 1, §§ 6,7. These sections provide that the owner, or person in possession of the land is prohibited from "non-rational use of the land" or from inflicting "ecological damage" on the land. These provisions, however, do not apply to disbursement decisions of the local land councils. A claim of ecological mismanagement would therefore be brought against the party in possession, not the local land council. Even if such a claim were successfully asserted, an unlikely event, the only penalty would be confiscation of existing property rights.

101. *Id.*, art. 89, ¶ 3.

102. *Id.*, art. 93, ¶ 1.

103. See generally Gordon, *supra* note 16, at 3.

104. Land Code, art. 4.

can therefore often avoid the conservation and recreation restrictions by categorizing the land's use as agricultural or industrial.¹⁰⁵

Competing claims of legitimacy and linguistic manipulations of the Land Code's ecological restrictions could, theoretically, be resolved through judicial clarification. In reality, however, this has not happened.¹⁰⁶ The Russian courts presently lack either the interpretational or enforcement powers necessary to resolve these conflicts.¹⁰⁷ Without a legal forum to settle these disputes, the Russian privatization process has been rife with corruption.¹⁰⁸ Given its geographic remoteness from Moscow, this situation has been particularly true in Siberia. As a recent *Newsweek* cover story reported, "[t]here is a wild west feel [in Siberia] . . . the sense that anybody with an idea and some guts can make a fortune."¹⁰⁹

(2) 1991 Federal Environment Act

In December 1991, Russia adopted the Federal Act for the Protection of the Environment.¹¹⁰ This law sets forth three principal legal regimes. First, it establishes the requirements for an *expertiza*, the impact report a government agency must prepare whenever a proposed action could adversely affect the environment.¹¹¹ Second, it provides for the creation and management of national parks and preserves.¹¹² Third, it expressly grants *subrepubliks*, or regional governments, the authority to pass laws furthering the protection of endangered wildlife, or banning destructive environmental practices.¹¹³ The Act's first two legal regimes are discussed below. The Act's third legal regime is discussed in section (B) on regional efforts to protect Siberian nature.

The *expertiza* requirements set forth in the Russian Federal Environment Act are similar to the Environmental Impact Statement (EIS) requirements set forth in the United States' National Environment and Policy Act (NEPA).¹¹⁴ Like the EIS under NEPA, the Russian *expertiza* must discuss the foreseeable adverse environmental effects of a given project, as well as what steps can be taken to mitigate these negative effects.¹¹⁵

105. Interview with Borsuk, *supra* note 17.

106. *Id.*

107. *Id.*

108. Gordon, *supra* note 16, at 3.

109. Elliott, *supra* note 18, at 27.

110. Federal Environment Act.

111. *Id.*, arts. 35, 36.

112. *Id.*, art. 60.

113. *Id.*, arts. 9, 65, §§ 1, 4.

114. *Id.*, arts. 35, 36.

115. *Id.*

Unlike NEPA, however, the Russian Federal Environment Act does not include mechanisms for public participation in the preparation of the impact statement.¹¹⁶ Because the government often has an interest in concluding that the adverse environmental impacts are minimal, this lack of openness undercuts the credibility of the *expertiza* process.¹¹⁷ Moreover, regional governments also face considerable anti-*expertiza* pressure from the general public, who bear the tax burden for carrying them out.¹¹⁸ Regional governments will thus often reach the convenient preliminary conclusion that no adverse environmental effects are foreseeable, and that therefore no *expertiza* is required.¹¹⁹

The national park and preserve regime established under the Federal Environment Act vests authority for the management of these areas solely in the Ecology Ministry of the Russian Federation.¹²⁰ Within established park and preserve zones, development is permitted only so long as it is consistent with the ecological maintenance of the protected area.¹²¹ Although this regime appears rational and effective on paper, it has not been provided with adequate funding, and has therefore failed to designate the boundaries for these protected areas, or establish criteria for creating such protected areas in the future.¹²²

The Federal Act on Protection of the Environment represents an important step in the development of Russian ecological policy. The Act's lack of public participation and adequate funding, however, have so far rendered it largely ineffective and unimplemented.

(3) 1993 Russian Forestry Act

In December 1993, the Russian Supreme Soviet adopted a new forest management act.¹²³ The Act revises existing forestry laws in several respects. Unfortunately, these revisions appear to weaken, rather than strengthen, forest protection.¹²⁴ This weakening is partly intentional, and partly due to the law's reliance on politically inaccurate assumptions.

116. Lisa Tracy, *The State of Russian Environmental Law: Notes on Vera Mischenko's Visit* (March 1993) (unpublished manuscript, on file at the Pacific Environment and Resources Center) [hereinafter Tracy]. Ms. Tracy is Co-Director of the Siberian Forest Protection Project.

117. *Id.*

118. *Id.*

119. *Id.*

120. Federal Environment Act, art. 60.

121. *Id.*, arts. 61, 63.

122. Levin, *supra* note 15, at 712. ("The Nature Protection Law does not, however, provide a budget or a source of funding for the protected areas, nor does it establish existing area boundaries or criteria for creating future parks and reserves.")

123. Alexei Grigoriev, *Russia's New Forestry Act: Leaving the Door Wide Open for Ruthless Exploitation*, TAIGA NEWS, March 1993, at 2 [hereinafter Grigoriev].

124. *Id.*

Under previous forestry laws, citizens and non-governmental organizations were given express authority to participate in forest management decision-making.¹²⁵ This right to participation was secured through the agency inspectorate, which solicited and submitted to forestry authorities the comments of interested parties.¹²⁶ This comment and criticism process has, in recent years, involved thousands of individuals and groups throughout the country.¹²⁷ In Siberia, where ecological mismanagement of the forest has been particularly acute, this process served as an important vehicle for environmentalists to voice their concerns. While these concerns may have been overcome by short-term economic interests and corruption, the existence of a legally recognized forum for debate was nonetheless important.¹²⁸

In the new Russian Forestry Act, the chapter recognizing the nongovernmental inspectorate was omitted.¹²⁹ As a result, it is uncertain what role citizens and environmentalists would play in forest management decision-making.¹³⁰

An additional, and potentially positive, change in the Forestry Act concerns the clarification of federal and regional jurisdiction over forests. Under the new Act, the federal government retains exclusive authority over all national parks and preserves.¹³¹ Moreover, no commercial logging would be allowed in these federally protected areas.¹³² As such, these provisions parallel and expand on the park and preserve provisions set forth in the 1991 Land Code and the 1991 Federal Environment Act. The explicit prohibition on commercial logging in effect defines the forestry management practices consistent with these areas' primary recreation and conservation purposes.

Unfortunately, the proposed Forestry Act also suffers from the same defects as these prior laws. Commercial timber logging may be prohibited in federal parks and preserves, but the federal government has not yet clearly established the boundaries of these lands.¹³³ In the absence of such boundaries, regional governments will continue to assert jurisdiction over these areas, and the destruction of the forests will continue.¹³⁴

Because the proposed Forestry Act does not provide for criminal penalties, injunctive relief, citizen enforcement or personal liability for government

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. Forestry Act, art. 5.

132. *Id.*, arts. 5, 14, 45.

133. Levin, *supra* note 15, at 712.

134. *Id.*

officials, it once again seems unlikely that the courts will be able to play a constructive role.¹³⁵ The disparity between forestry law on the books and forestry law in practice is, therefore, likely to increase.

B. REGIONAL EFFORTS TO PROTECT SIBERIAN NATURE

Under the 1991 Land Code, the 1991 Federal Environment Act and 1993 Forestry Act, regional governments are given considerable authority to adopt laws that protect the environment. The Land Code grants regional authorities the power to control privatization and land-use outside of federally recognized areas.¹³⁶ The Federal Environment Act provides that regional regulators can adopt laws forbidding private operations that adversely impact the environment.¹³⁷ The Forestry Act permits regional regulation of all non-federal forests.¹³⁸ Taken together, these laws help establish the framework for a truly federal system, wherein regional governments retain considerable powers.

While the emergence of this federal framework holds great possibilities for Siberian ecology protection, it has worked thus far to the disadvantage of environmentalists.¹³⁹ Poverty and political chaos at the regional level have created a situation generally unreceptive to ecological reform.¹⁴⁰ As Andrei Borsuk of the Vladivostok-based International Ecological Union explained, Siberian regional governments are more concerned with the "important business" of reducing unemployment and attracting investment.¹⁴¹ Mr. Borsuk's observations once again highlight the need to integrate ecological reform with strategies for economic development.

Such efforts at ecological and economic integration are already under way in Siberia. In the Bikin River Basin, for example, a program for sustainable economic development has been initiated by local citizens.¹⁴² This program promotes non-timber forest products, sustainable agriculture and ecotourism.¹⁴³ The success of such programs will help establish the political

135. *Id.* at 713.

136. Land Code.

137. Federal Environment Act.

138. Forestry Act.

139. Interview with Borsuk, *supra* note 17; Kotov & Nikitina, *supra* note 6, at 13. ("Hopes for improvement of the environmental situation on the basis of decentralization, however, have not yet been justified. On the contrary, in some cases, decentralization has aggravated environmental problems.").

140. See Kotov & Nikitina, *supra* note 6, at 12.

141. Interview with Borsuk, *supra* note 17.

142. David Gordon & Lisa Tracy, *Sustainable Development Initiative in the Bikin River Basin*, January 1994 (unpublished informational document, on file with the Pacific Environment and Resources Center).

143. *Id.*

climate and financial resources necessary for ecological reform at the regional level.

VI. STRATEGIES FOR IMPROVING NATURE CONSERVATION IN SIBERIA

The preceding analysis indicates that the ecological deterioration of Siberia is due in large part to the legal legacy left behind by the Soviet Union, and the difficulty of implementing new environmental laws. While the passage of new environmental legislation may have some cosmetic appeal, such laws are unlikely to improve Siberian ecological conditions unless these underlying legal issues are confronted. With an eye towards addressing these underlying legal concerns, the following environmental strategies are proposed:

A. EXPANSION OF CITIZEN ENFORCEMENT PROVISIONS

Adopting a law does not ensure that the provisions of the law will be implemented. The implementation of a law can only be guaranteed by providing specific procedures to prosecute and punish violators. Without such provisions, citizens and the government have no clear incentive to obey the law. Without such provisions, written law and law in practice begin to diverge, and the rule of law begins to break down.

This situation becomes particularly acute in political systems, such as Russia, that lack a strong, independent judiciary.¹⁴⁴ In such political systems, judges lack the power to create doctrines that would allow for the prosecution and punishment of violators. Also, the courts cannot be relied upon to supplement the textual provisions of a law so that implementation is possible.¹⁴⁵

Because a strong, independent judiciary cannot be created overnight, Russians wishing to ensure government and private compliance with environmental laws should push for citizen enforcement provisions in new legislation.¹⁴⁶ These provisions should be highly specific. They should provide that all parties whose interests are potentially threatened may initiate a suit for compliance. They should expressly grant courts the power to fine and imprison individuals who knowingly violate the law, as well as the power to enjoin activities that violate the law. Moreover, these provisions should permit the recovery of litigation costs for parties who successfully bring compliance actions.

144. Interview with Borsuk, *supra* note 17.

145. *Id.*

146. A citizen provision already exists in the Federal Environment Act, although it lacks the specificity advocated in this article. Federal Environment Act, arts. 11, 12.

Strong and highly specific citizen enforcement provisions would serve many important purposes. The necessary prosecution and punishment components to ensure proper implementation of existing environmental laws would be provided. In turn, help reduce the divergence between written law and law in practice would be reduced. The provisions would also give the judiciary an opportunity to play a constructive and meaningful role. By merely applying the express language of these citizen enforcement provisions, judges would improve the credibility of the courts.

B. CLARIFICATION OF PRIVATIZATION PROCESS AND REAL PROPERTY LAWS

In considering the relative ineffectiveness of existing Russian environmental legislation, one legal problem emerges as a constant — uncertainty regarding the privatization of and jurisdiction over real property. The 1991 Land Code established a legal regime for categorizing land, and a process for gradual privatization.¹⁴⁷ The categories and privatization process set forth in the Land Code in turn formed the basis for subsequent distinctions in the Federal Environment Act and the Forestry Act.¹⁴⁸ Because of this legislative progression, the proper functioning of the privatization process is essentially a prerequisite to the implementation of these subsequent laws.

Unfortunately, as discussed earlier in this article, the privatization process has so far been unsuccessful in clarifying the legal status of Russian real property. The privatization process was carried out by local land councils whose legitimacy was often unclear.¹⁴⁹ These councils were then required to make distinctions based on categories of land which the federal government had not yet clearly identified.¹⁵⁰ The legal results of this process have been understandably ambiguous and unclear.

Before existing environmental protections can be implemented, or even made comprehensible, Russia will have to return to square one. The privatization process must be rationalized, and the categories of land described in the Land Code must be identified.¹⁵¹ Until this process is completed, Russian environmental legislation will remain incoherent, and thus incapable of implementation.

147. Land Code.

148. Federal Environment Act; Forestry Act.

149. *See supra* text accompanying notes 105-106.

150. *See supra* text accompanying notes 105-106.

151. According to Andrei Borsuk, steps have already been taken to address this underlying problem. In January of 1994, the local land councils were disbanded, and their land disbursement powers were transferred to regional dumas, or legislatures. This development represents an important first step in the clarification of Russian real property laws. Interview with Borsuk, *supra* note 17.

VII. CONCLUSION

The collapse of the U.S.S.R. has provided Russia with an opportunity to stop the ecological deterioration of Siberia. The realization of this goal, however, requires more than the adoption of aspirational environmental laws. It requires a critical assessment of the reasons underlying Siberia's flawed ecological-legal framework.

The starting point for this assessment should be the legal legacy inherited from the U.S.S.R. This legacy accounts for many of the shortcomings and implementational defects of existing environmental legislation.¹⁵² Efforts must therefore be made to unlearn the legal lessons of the Soviet era.¹⁵³

The judiciary must establish itself as a political forum where violations can be asserted, and violators punished. Procedures must be developed that allow citizens to help implement and enforce environmental laws. More significantly, however, Russians and Siberians must come to expect that law in practice will reflect law on the books. Only then will ecological protections move beyond the page, and into the forests and rivers of Siberia.

152. *See supra* text accompanying notes 63-83.

153. *See supra* text accompanying notes 146-153.