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Soviet Environmental Protection: The Challenge for Legal Studies

Nicholas A. Robinson*

Every society evolves its own cultural and political process for building consensus about its core values. Environmental protection is no exception. Environmental concerns are major issues today, although many environmental problems were ignored during most of the Industrial Revolution and coincident periods of warfare. Pollution damage to human health and natural systems has grown enormously and is now a significant component of the core values of practically every society. This is certainly the case for the USSR, as the *Pace Environmental Law Review* has documented previously.¹

Environmental law is the field of legal endeavor by which each society restates its values about protecting nature, natural resources and human health. Within the Soviet Union today, an extraordinary rebuilding of the entire society is under

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1. Robinson, *Perestroika and Priroda: Environmental Protection in the USSR*, 5 PACE ENVTL. L. REV. 351 (1988); Butler, *Law Reform in Soviet Environmental Law*, 5 PACE ENVTL. L. REV. 425 (1988); Kolbasov, *Environmental Law Administration and Policy in the USSR*, 5 PACE ENVTL. L. REV. 439 (1988); Kolbasov, *Modern Ecological Policy and the Utilization of a Global Environmental Protection Strategy*, 5 PACE ENVTL. L. REV. 445 (1988); Timoshenko, *Protection of Wetlands by International Law*, 5 PACE ENVTL. L. REV. 463 (1988); Timoshenko, *The Problem of Preventing Damage to the Environment in National and International Law*, 5 PACE ENVTL. L. REV. 475 (1988); Futrell, *Public Participation in Soviet Environmental Policy*, 5 PACE ENVTL. L. REV. 487 (1988); Brinchuk, *Legal Protection of the Environment From Pollution By Dangerous Industrial Wastes*, 5 PACE ENVTL. L. REV. 509 (1988); Iskoyan, *Issues Related to Legal Protection of Wild Plants*, 5 PACE ENVTL. L. REV. 519 (1988); Galyatin, *Comparative American-Soviet Environmental Land Use A. A Soviet View*, 5 PACE ENVTL. L. REV. 531 (1988); Stever, *Comparative American-Soviet Environmental Land Use B. An American View*, 5 PACE ENVTL. L. REV. 535 (1988); Waxmonsky, *U.S.-USSR Cooperation in Environmental Policy*, 5 PACE ENVTL. L. REV. 541 (1988).

way, including the realms of environmental values. Changes within the USSR, entail establishing active, participatory democracy in place of the leading control by the Communist Party, and creating a market economy to supplant much of the centrally planned economy. Amidst these changes, the human rights of competing nationalities and ethnic groups are being asserted. Throughout this fundamental reordering of Soviet society, there is evident a philosophical consensus on the need to protect the environment.² There is not yet, however, any consensus about how to do so.

The five essays by Soviet environmental law specialists published in this volume of the *Pace Environmental Law Review* provide insights into the contemporary debate in the USSR about how to protect nature.³ Before commenting on each essay, it is useful to sketch out the problems which the Soviet Union is encountering as it struggles to cope with its substantial pollution and widespread natural resource misuse.

I. The Environmental Stakes

Decision makers in the USSR are generally aware of the importance of their natural resource base for the Soviet Union's future well-being and for the biosphere.⁴ Nearly half the lands, waters and life of the northern hemisphere are found within the Union of Soviet Socialist Republics. Its realm encompasses alpine peaks, vast rivers, tundra, the world's largest freshwater lake (Lake Baikal), extensive coasts, hot deserts and arctic ices. It is home to a heavily industrial-

2. See, e.g., the articles in 5 PACE ENVTL. L. REV. (Spring 1988).

3. See Brinchuk, *Ecological and Legal Problems of Agro-Chemicalization*, 7 PACE ENVTL. L. REV. 171 (1989); Romanova, *Tourism and Environmental Protection*, 7 PACE ENVTL. L. REV. 185 (1989); Iconitskaya, *Legal Protection of Land in the USSR*, 7 PACE ENVTL. L. REV. 161 (1989); Leont'eva, *New Aspects in the Structure and Jurisdiction of the COMECON Regarding the Protection of the Environment*, 7 PACE ENVTL. L. REV. 179 (1989); Timoshenko, *Ecological Security: The International Aspect*, 7 PACE ENVTL. L. REV. 151 (1989).

4. The first comprehensive survey of Soviet environmental problems has been prepared by *Goskompriroda* for 1988 and released in January 1990, in English and Russian. A copy was provided by the Vice Chairman of *Goskompriroda*, Dr. Sokolovsky, to the U.S. EPA Administrator, William Reilly, at the XI Meeting of the USA-USSR Joint Committee on Cooperation in the Field of Environmental Protection.

ized economy and a hungry mining of timber, fish, minerals and other natural resources. It has destroyed the Aral Sea, once Earth's fourth largest inland water body; vast areas are polluted from the Ukraine to Siberia. The contamination from the Chernobyl accident will persist for centuries.

While industrializing in the extraordinarily short period of scarcely seven decades, including fighting the Second World War, the Soviets paid relatively little attention to either their pollution control or determining sustained yields for their natural resource harvests. Degradation of the natural environment in the USSR has been masked by the vastness of the nation; for a time, dilution and dispersion were easily used "solutions" to pollution, and renewable resources were mined without regard to the coming point of exhausting the supply. Now environmental problems adversely affect public health, aesthetic concerns and the continued viability of some economic enterprises.

Journalists in the USSR have been attacking officials for these deteriorating environmental conditions for over twenty years. Soviet print media was bold on ecological issues long before *Glasnost*, or the policy of openness of critical debate, was announced. As a result, Soviet federal laws on water use and pollution control, on air pollution, on wildlife conservation and on land use have been adopted or revised extensively.⁵ In late 1987, the Soviet Union decided to close down *all* commercial activities on Lake Baikal, add two vast national parks to the several wildlife sanctuaries ("zapovedniki") already on the lake, and establish protection for an area the size of all the Great Lakes. The Baikal basin is still largely a natural wilderness; this Soviet decision regarding Lake Baikal is comparable to the vast dedication of remaining North American wilderness in the Alaska Lands Act of 1980, which preserved an area larger than the United Kingdom. The Baikal area is to serve tourism, rather than industry or timber production.

5. COLLECTED LEGISLATION OF THE USSR AND CONSTITUENT UNION REPUBLICS (W. Butler trans. 1982).

II. Initial Soviet Policies to Protect the Environment

Despite the growth of Soviet environmental legislation, and the effectiveness of reforms such as the protection of Lake Baikal, most pollution control laws are not yet operational at the factory level. Both Soviet and foreign commentators have noted the gap between statutory standards and their spotty implementation.⁶ Moreover, the rapid growth of a large body of "All-Union" Soviet environmental statutes did not focus on how to achieve or facilitate its implementation. The leading Soviet environmental law expert, Professor Oleg S. Kolbasov, has observed that these Soviet statutes present:

[I]nadequacies which diminish the effectiveness of the law and therefore should be eliminated. We are speaking here of the excessive complexity, declarativeness, contradictoriness and drafting deficiencies of the environmental protection legislation. In recent years, it has become quite complicated; a broad system of norms regulates in detail the behavior of individuals in various types of nature protection and natural resource utilization.⁷

Soviet environmental law is confronting many of the same problems which this new and growing body of law has encountered in other nations.

As an element of *perestroika*, the Soviet Union's Council of Ministers and the Central Committee of the Communist Party decided to act to achieve implementation of environmental laws. In February 1988, a new national agency for environmental protection was established. Known as "*Goskomprroda*," or the "State Committee on Environment Protection," this agency was designed to guide and to consolidate the operations of the State Hydrometeorological Service and all other pollution monitoring and control agencies.⁸ *Gos-*

6. See, e.g., B. KOMAROV, *THE DESTRUCTION OF NATURE IN THE SOVIET UNION* (1980); M. GOLDMAN, *THE SPOILS OF PROGRESS: ENVIRONMENTAL POLLUTION IN THE SOVIET UNION* (1972); C. ZIEGLER, *ENVIRONMENTAL POLICY IN THE USSR* (1987).

7. O. Kolbasov, *Compliance with Nature Protection Legislation*, Sov. Gos. & PRAVO, No. 4 USSR Academy of Sciences' Institute of State & Law (1988).

8. See *Environment Protection Agency Set Up*, *The Current Digest of the So-*

kompriroda was to oversee the creation of environmental protection agencies at the level of each state and local government. One division of *Goskompriroda* is establishing the Soviet system of "Expert Assessment," as an environmental impact assessment (EIA) process like the impact statements required under the United States National Environmental Policy Act⁹ or the EIA Directive of the European Economic Community.¹⁰

In addition to establishing new environmental protection permits and inspections under *Goskompriroda*, the USSR is modernizing its criminal code. There will be stiff new penalties for pollution. The "*Procurators*," or prosecutors, already have obtained court decisions to jail and fine factory officials for severe pollution incidents under existing law. Some forty-special-ecological procuracies are now in operation to enforce environmental laws protecting especially sensitive areas. As economic decentralization and market expansion take place, criminal law will be used more pervasively as a tool to assure that development interests take environmental protection into account.

Finally, the new joint venture laws¹¹ are designed to encourage foreign investment in the USSR. In addition to all other sectors, there is a vast market for pollution control technology throughout the Soviet Union. Even out-of-date and rudimentary pollution controls are needed immediately in many Soviet factories. New developments will be expected to incorporate the same state-of-the-art pollution control designs and technologies as are now used in the United Kingdom and other western industrial nations. The USSR will encourage western investment in manufacturing and installing pollution

viet Press, Feb. 17, 1988, at 7, col. 1.

9. 42 U.S.C. §§ 4321-4370a (1982 & Supp. 1986).

10. *On the Assessment of the Effects of Certain Public and Private Projects on the Environment*, 175 O.J. EUR. COMM. (July 5, 1985) (Directive of the Council of European Communities, June 27, 1985).

11. See Decree No. 48, Jan. 13, 1987, of the USSR Council of Ministers, On the Establishment in Territory of the USSR and Operation of Joint Ventures International Amalgamations and Organizations of the USSR and other CMEA Member-Countries, reprinted in, *LEGAL AND PRACTICAL ASPECTS OF DOING BUSINESS WITH THE SOVIET UNION* 255 (Prac. L. Int. 1988).

controls in the Soviet Union.

It will take perhaps a decade for the Soviet Union to establish the rudimentary pollution control administration which *Goskompriroda* envisions. In the ensuing years, economic and political battles will be waged by various industrial and resource development enterprises to comply with Soviet environmental laws. Under *perestroika*, new citizen ecology clubs have been created to campaign for protecting the environment, and the older established groups, such as the All-Russia Society for the Protection of Nature are being challenged to become more assertive. The media has become more aggressive in demanding effective environmental protection. "Green" candidates are being elected in local elections to City Soviets.

Prior to *perestroika*, environmental law was growing as one of the few reform movements not mired in the political and socio-economic stagnation which characterized much of the period when Leonid Brezhnev was General Secretary of the USSR Communist Party. Today, the environmental reforms must compete with all other aspects of restructuring. This pervasive reorganization of societal programs is slowing environmental progress. This delay is harmful to the health of Soviet citizens and to the well-being of nature in the USSR. It also harms economic growth.

Reform of the Soviet economy and foreign investment in the USSR would be furthered by a stronger environmental protection regime. Only effective Soviet environmental protection programs can safeguard sites which are unique on Earth, like Lake Baikal and the glaciers of the Altai Alps; only rigorous air pollution control in the USSR will abate transfrontier "acid rain" and the Soviet contributions to the "arctic haze" hovering in Alaska, Canada and Siberia. Rigorous air pollution control is also necessary to curb the chlorofluorocarbons (CFC's) and halon emissions which erode the stratospheric ozone, and to cut back on the release of "greenhouse" gases to the atmosphere. Only scientifically premised, sustained-yield fishing, silviculture, agriculture and other resource harvests will stabilize the reproductive capacity of flora and fauna, protect migratory species, and safeguard biological diversity. So-

viet environmental laws need to set base-line standards and control harvests for sustainable development; they have often failed to do so in the past, and are not doing so effectively under *perestroika* at present.

Environmental law is on the threshold of being recognized in the USSR as a new field of law in its own right. It is being added to law school curricula, and new legislation on environmental protection is being considered by the newly elected All-Union, Republic and local legislative representatives. As it emerges, lawyers abroad will need to come to understand it, whether to assist joint venturers in the USSR or merely to understand how law does or does not safeguard our common environment throughout Earth's Northern Hemisphere. Comparative legal studies can illustrate how foreign and Soviet legal specialists might each improve their respective environmental law regimes as these legal systems develop further.

The Soviet environmental law regime will develop. If anyone doubts the vigor with which the Russian people will continue to demand ever more effective environmental protection laws, they should consider these words by the popular and famous Siberian writer Valentin Rasputin:

Returning from a stroll one day, Tolstoy wrote:

Is it possible that the feeling of bitterness, vengeance, the passion for destruction of one's own kind can survive in a man amid such entrancing scenery? Everything bad in the heart of man should, it seems, disappear in contact with nature—that direct expression of the beautiful and the good.

Nature is of itself moral, only man can make it immoral. And how are we to know if it is not probably nature that keeps us to a considerable degree within those more or less reasonable bounds by which our moral condition is determined, and is it not nature that fortifies our good sense and good conduct? Is it not nature that looks into our eyes night and day with prayer, hope and warn-

ing? And can it be that we still do not heed that call? There was a time when an Evenk [one of Siberia's indigenous peoples], before cutting down a silver birch on the shores of Baikal, would recite a long prayer of penitence, begging the tree's forgiveness for his need to destroy it. We are different now. That is why we find in ourselves that power to stay the soulless force threatening not just a birch-tree, as two or three hundred years ago, but Old Father Baikal himself, for we return an hundredfold to nature what was put into us--kindness for kindness, favour for favour—and so round the eternal cycle of our moral being.

The crowning glory and mystery of nature, Baikal was not created for production needs but for us to drink its water, its priceless and most important wealth, marvel at its stately beauty and breathe its precious air. First and foremost, we need it ourselves.¹²

Rasputin's words reflect a strong, popular sentiment throughout the Russian Republic, echoed by comparable nationalist interests in the Baltic Republics, the Ukraine, and elsewhere. On March 24, 1990, Rasputin was one of ten persons appointed to the USSR's new Presidential Council to advise President Gorbachev.¹³ In this new post, Rasputin's clear, moral message for environmental protection will be heard by ministers in Moscow more directly. Rasputin's appointment illustrates that the political pressure to increase environmental protection is growing; nonetheless, environmental protection is still met by increasing resistance by old-line ministries seeking to preserve their prerogatives.

Despite these initial Soviet policies to improve the regime for environmental protection, the efforts in the USSR today are at a critical juncture. Since its establishment in 1988 as the Soviet Union's central authority for environmental protection, *Goskompriroda* has seen its once comprehensive jurisdiction dismembered, lost its first director, and been denied

12. See also Rasputin's other writings collected in *SIBERIA ON FIRE* (G. Mikkelsen & M. Winchell trans. 1989).

13. Keller, *Gorbachev Picks A New Cabinet: Old Allies and A Few Hard-Liners*, N.Y. Times, Mar. 25, 1989, at A18, col. 1.

many of the financial, technical and personnel resources which it needs to do its job. It is ironic that *Goskompriroda*'s shortcomings coincide with rapidly escalating public demands for effective and immediate pollution control. Nonetheless, established economic interests oppose new controls. The resistance to environmental reform was evident when the newly elected and reconstituted parliament, the Supreme Soviet, failed to reach consensus on adopting a new organic statute for *Goskompriroda* in 1989. The Supreme Soviet nonetheless promised to enact a tough new environmental law in 1990. The essays in this volume should be read in light of these on-going struggles.

III. Reshaping Soviet Environmental Law

While the Soviet government makes symbolic progress to protect nature, as in the establishment of an International Park to conserve the archeological and natural resources of the Bering Sea region,¹⁴ the substantive health of the Soviet Union's environmental administrative framework has itself emerged as a major concern. In the on-going restructuring of legislative and executive agencies, including the government's industrial enterprises, *Goskompriroda* is given a relatively low priority. In the early cooperation among practicing lawyers, environmental law has not yet become a visible priority.¹⁵

Goskompriroda was established in 1988 with a broad charter.¹⁶ It was to establish a strong pollution inspectorate, institute fees for all natural resource uses, assess fines for pollution, build a nationwide environmental impact assessment

14. Shabecoff, *U.S.-Soviet Park Proposed Along Bering*, N.Y. Times, Jan. 10, 1990, at A18, col. 1.

15. The Collegium of Advocates of Moscow and the Association of The Bar of The City of New York held their first annual conference on March 13, 1990. Area XI of the American-Soviet 1972 bilateral agreement covers legal and administrative measures. Both sides agreed to expand exchanges of lawyers in the near future. The President's Council on Environmental Quality is to explore U.S. arrangements for this new venture. See Robinson & Waxmonsky, *The US-USSR Agreement to Protect the Environment: 15 Years of Cooperation*, 18 ENVTL. L. 403 (1988).

16. See Robinson, *Perestroika and Priroda: Environmental Protection in the USSR*, 5 PACE ENVTL. L. REV. 351, 380-87 (1988); *On a Radical Reorganization of Environmental Protection in the County*, Pravda, Jan. 17, 1988.

process, and initiate extensive programs for public education. The decree establishing the new ministry took a holistic view toward protecting and restoring the Soviet environment; natural resource use and environmental protection roles were consolidated in one agency.

No sooner was *Goskompriroda* established, however, than harsh turf battles erupted. The Forest Ministry, which has clear-cut vast forest acreage, destroyed watersheds, engaged in almost no reforestation and provided negligible forest fire protection, successfully mustered its political muscle to challenge *Goskompriroda* and to regain its independence. The various petro-chemical industries pre-emptively attacked *Goskompriroda's* first chairman, Fyodor Morgun, and beat back his early attempts to target these enterprises for early clean-ups.¹⁷ By the summer of 1989, Morgun retired after less than a year in office, realizing that the demands were so enormous that a younger person was needed as chairman. By the fall of 1989, the politicians in the Council of Ministers had also been persuaded to sever the air pollution monitoring and effective air pollution control expertise from *Goskompriroda*; these functions were restored to the State Committee on Hydrometeorology (*Goskomgidromet*, or "Hydromet"). Hydromet's chairman, Yuri Izrael, has been widely criticized for the Committee's inaccurate and slow monitoring of the Chernobyl accident and for allowing air pollution throughout the USSR to reach unprecedented levels of high contamination.

Soviet budget officials have limited the staff for *Goskompriroda* to some 400 persons at the headquarters level. *Goskompriroda* was to guide the creation of counterpart agencies in each of the fifteen Republics and at the local level. The political difficulties in the Baltic Republics, Armenia, Azerbaijan and several other Republics have prevented the institution of these new environmental authorities in these areas, although counterpart committees exist in Byelorussia, the Ukraine, and elsewhere. There is as yet no nationwide system for environmental protection in the USSR.

17. Thompson, *The Greening of the USSR*, TIME, Jan. 2, 1989, at 68-69.

Nonetheless, the Soviet public expects and demands rigorous new efforts at environmental protection. Citizen demonstrations against new projects with pollution or resource destruction potential are widespread.¹⁸ Following contested local elections in the spring of 1990, the "Greens" became an even more evident political force in local governing councils throughout the USSR. This will bring renewed demands for a truly effective *Goskompriroda*, or its equivalent.

Some indication of the political power of Soviet environmentalists is evident in the actions of the first session of the newly elected Supreme Soviet. During the summer of 1989, the Supreme Soviet rejected many nominees for appointment as ministers because of their poor prior record on environmental protection.¹⁹ Among their last approved nominations was a historic "first": the Supreme Soviet confirmed the appointment of the very first non-Communist Minister in the nation's history. Dr. Nikolai N. Vorontsov became the second Chairman of *Goskompriroda*.

Vorontsov has emerged as a vigorous leader, putting his scientific and personal vigor behind his staff.²⁰ However brilliant a scientist and independent a mind he may be, he is not yet an experienced bureaucrat accustomed to the turf battles of the Council of Ministers. His agency is still a junior and weakened player on the Council. As *Economist* put it:

The Soviet Union's Council of Ministers has often voiced its concern about environmental degradation. Yet it has allowed the huge Tyumen petrochemical complex to go ahead with no proper study of its environmental impact. It authorizes cheap loans for the gas-industry ministry, which is confiscating land in Yamal and forcibly evicting its inhabitants, so that it can drill wells and build roads

18. French, *The Greening of the Soviet Union - Soviet Citizens and Leaders Are Waking to the Environmental Crisis That Has Spoiled Their Treasured Lakes, Forests and Rivers*, 2 WORLD WATCH, May-June 1989, at 21, 22.

19. Keller, *Soviet Deputies, In Show of Power, Block 8 Nominees*, N.Y. Times, June 28, 1989, at A1, col. 1.

20. *Minister of Environmental Protection: One Day in the Life of Nikolai Vorontsov*, Moscow News, Nov. 19-26, 1989, at 16, col. 1.

where it pleases.²¹

Vorontsov apparently has been out-gunned at the Council of Ministers which, despite *perestroika*, behaves as if the Brezhnev era policies on nature exploitation were alive and well. His leverage so far seems to consist of using emergency powers to override normal economic, commercial and political decision making. For instance, thirty percent of polluting pharmaceutical plants have been closed in order to achieve local environmental quality benefits; at the same time this has reduced their production so that they can currently supply only half of the USSR's domestic demand for pharmaceuticals.²² The Council of Ministers then forced reopening of many of these factories, overriding environmental protection objectives.

Goskompriroda has assembled some outstanding experts. Victor Kostin is the agency's first chief inspector, authorized to supervise installation of new controls and enforce observance of controls by assessing fines throughout the nation. Yuri Maksimenko directs the new nationwide system for preparing environmental impact statements. Natalya Dobrovol'skaya is Executive Secretary of the Soviet side of the USA-USSR Joint Committee on Environment Protection, and Vladimir Sakharov is currently director of *Goskompriroda's* International Division. These individuals are dedicated experts.

Yet more is needed. Despite requests to establish a senior set of government environmental law attorneys, *Goskompriroda* was given only five. There are barely enough lawyers to meet routine bureaucratic needs, and none to work in a proactive fashion with the Procurator-General to design new prosecutions, or with legislators to design new laws. This shortcoming ridicules President Mikhail S. Gorbachev's goal to establish socialist legality, where state agencies grounded in laws govern in place of "men" and the "rule of law" is en-

21. *Russia's Greens—The Poisoned Giant Wakes Up*, ECONOMIST, Nov. 4, 1989, at 24-26.

22. L.A. Times, Apr. 2, 1990, at B3, col. 4.

hanced.²³ Some help may be obtained from the Sector on Ecological Law of the USSR Academy of Sciences' Institute of State and Law, which has entered into an agreement to assist *Goskompriroda* on the development of environmental law.

There are inadequate levels of staffing in all analogous sectors of *Goskompriroda*. There is moreover a need for in-service training at the Republic and local levels where new counterpart agencies are being organized. Even with an enhanced budget and staff, *Goskompriroda* seems hardly adequate to the tasks which its able leaders now confront. The Soviet public doubts that any effective environmental protection system is in place, and in many instances the public is correct in this belief.

With inadequate administrative measures in place to manage environmental protection, newly elected local leaders "just say no" to new proposed projects.²⁴ Joint ventures with partners from abroad, and other western enterprises seeking to do business in the USSR,²⁵ have been approved in Moscow only to see their projects put on hold by local authorities. If there is to be successful new industrial development in the USSR, a stable environmental regulatory regime needs to be established. *Goskompriroda* needs to lay down nationwide standards and see them consistently adhered to in all areas. In the exercise of power, most ministries regard environmental protection as a secondary priority, and *Goskompriroda's* mandates are subordinate to these agency's primary missions.

As early as the summer of 1988 there were proposals to give *Goskompriroda* the clear authority which it needed over other agencies. These proposals included the appointment of *Goskompriroda's* Chairman (Chairman Vorontsov) to the level of Deputy Prime Minister under Prime Minister Nikolai I. Ryzhkov. Presently, *Goskompriroda's* Chairman is one of some fifty ministers serving in the Council. Chairman Voront-

23. See generally Kampelman, *The Rule of Law in the Soviet Union*, FREEDOM AT ISSUE, Nov.-Dec. 1989, at 23.

24. See French, *supra* note 18, at 26-27; Robinson, *supra* note 16, at 399-414.

25. The growth in joint ventures on paper is rapid. See Seppala & Meyer, *Opportunities Await in Soviet Union*, AM. BANKER, Dec. 22, 1989, at 4.

sov himself has discouraged the proposal to elevate his post to that of vice chairman. He observes:

Frankly, I am a quite inexperienced minister. So, should I become an even more inexperienced deputy chairman of the Council of Ministers? As it were, . . . Ryzkhov already has 12 deputies. I do not think it is feasible to become the 13th deputy. He simply will not have time for me No, it is better to remain under the supervision of V. Doguzhiyev, Deputy Prime Minister, for emergencies. Only four committees, including ours, report to him. It is easier that way after all.²⁶

There apparently has not been serious consideration of the idea of *Goskompriroda* having an extraordinary vice chairman status, without management of other ministers in order to give environmental priority to *all* ministries.

To make up for the inbred resistance from other ministries, Vorontsov appears to be using the emergency powers of the Council of Ministers to gain priority status for environmental protection. On March 5, 1990, the Commission on Emergency Situations of the Council of Ministers approved the general provisions of a draft state program for environmental protection and the rational use of natural resources. The draft program outlines specific measures to be taken over the next five years, and a set of planning objectives for the year 2000. The program addresses urban air pollution and sewage treatment as the highest priorities; sewage discharge into drinking water sources is to be ended by 2000. Land, forest, flora and fauna and minerals extraction are also addressed. As an emergency expedient, the Commission instructed the governments of Union Republics and All-Union departments to provide for the immediate construction of drinking water facilities, to expand the use of aquifers, and to accelerate the delivery of bottled water to the public.²⁷

26. See *Take All—Vorontsov Defends Goskompriroda Progress*, Moscow POISK, Nov. 9-15, 1989, at 4-5.

27. *Daily Report: Soviet Union* (TASS television broadcast in English, March 5, 1990) (translated by Foreign Broadcast Information Service (FBIS) March 12, 1990).

This shortfall in *Goskompriroda's* authority is recognized in the USSR. The Supreme Soviet has a Committee on Ecology and the Rational Use of Natural Resources which is considering how to strengthen *Goskompriroda*. It has been considering drafts of a new statute over the past two years. The draft could restore *Goskompriroda's* jurisdiction over air pollution, forests and other areas, and could give *Goskompriroda* power to supersede the contrary views of competing ministries and enterprises. Given the opposition by other ministries, only the Supreme Soviet can make the policy decision to place *Goskompriroda* over other agencies. As might be expected, the entrenched ministerial opponents of *Goskompriroda* are lobbying the still inexperienced legislators to prevent the enactment of strong environmental controls which would make their short-term economic goals more easily achieved.

Unable to agree on a new law as it had hoped, the Supreme Soviet on November 27, 1989, did manage to agree to adopt a resolution entitled "Urgent Measures to Promote the Country's Ecological Recovery."²⁸ This resolution expresses the sense of the parliament on what it wants to see in the new laws. The test, of course, will be in the enactment of actual statutes and their specificity. They must be concrete, publicly disseminated, and avoid repeating the inept generalities of Soviet legislation which in the past have frustrated their rigorous implementation.²⁹

The general points of this Supreme Soviet's resolution are the following:

(a) The Supreme Soviet declares that the USSR's environmental degradation is worsening, "exacerbated by the irresponsible attitude of the leaders of many USSR Ministries and departments . . . toward the execution of nature conservation measures"

(b) The forthcoming Five Year Economic Plan is to provide emergency help to ecological disaster regions, to

28. See *USSR Supreme Soviet Resolution on Urgent Measures to Promote the Country's Ecological Recovery*, Pravda, Dec. 3, 1989, at 1, col. 3.

29. See generally Foster-Simons, *Towards a More Perfect Union? The 'Restructuring' of Soviet Legislation*, 25 STAN. J. INT'L L. 331 (1989).

eliminate urban air pollution where maximum health standards are exceeded (at least 103 such sites exist), to eliminate drinking water contamination and assure food safety.

(c) No work programs in 1990 can proceed unless approved by *Goskompriroda's* independent "State Commission on Ecological Experts," the environmental impact assessment process.

(d) Aral Sea restoration is to receive high priority. A competition for proposals to do so will be held in 1990. Remediation of areas affected by the Chernobyl accident is to continue as a high priority.

(e) In 1990 a new State Energy Program is to be established using "non-traditional, ecologically safe sources of energy" and safer nuclear reactor designs. Nuclear tests are to cease.

(f) Economic incentives are to be examined in the Council of Ministries to tax harmful activities, and encourage environmentally benign activities such as water conservation.

(g) Park land is to be expanded. The Procurator-General is to expand the system of nature conservation prosecutors' offices.

(h) International cooperation is to be expanded and implementation of the USSR's international commitments on ecological problems is to be ensured.³⁰

In addition to these provisions, there are a set of legal objectives which the Resolution sets forth for new Soviet environmental laws. First, criminal laws are to be proposed, including introduction of the "ecological offense." The Resolution provides that:

Legal liability and economic sanctions for nature conservation offenses are to be enhanced, compensation is to be envisaged for damage caused by the activity of enterprises, organizations, and individuals, and officials are to be held liable for deliberate concealment or distortion of

30. See *USSR Supreme Soviet Resolution on Urgent Measures to Promote the Country's Ecological Recovery*, *Pravda*, Dec. 3, 1989.

information about accidents with ecological consequences, the state of people's health, and pollution of the environment.³¹

Second, the new statutes, perhaps also the organic law (*polozhenie*) for *Goskompriroda*, are to be considered and finally adopted. The Resolution states that:

In the first half of 1990 the USSR Council of Ministers is to submit for examination by the USSR Supreme Soviet a draft law on nature conservation and, before the end of 1990, a draft law on specially protected natural areas and a draft law on the utilization of nuclear energy and nuclear safety. In 1990 the relevant state programs are to be elaborated, envisaging, in particular, halting in 1991 the production of protein vitamin concentrates from petroleum paraffins, the extensive introduction of biological methods of agricultural crop protection, the enhancement of soil fertility, the improvement of land use, and the creation of constantly updated ecological maps of the USSR and the union republics.³²

Third, control of pollution is to be better established. The Resolution provides that: "State control is to be made more effective in the sphere of nature conservation and use of natural resources."³³ Environmental quality control functions are to be clearly defined. The sphere of influence of the USSR State Committee for Protection of the Environment in terms of monitoring the rational utilization of natural resources is to be enhanced. The Congress of USSR People's Deputies is to be asked to consider in 1990 the question of adding the post of Chairman of the USSR State Committee for Protection of the Environment to the list of posts approved by the Congress, in accordance with the USSR Constitution.

The adoption of these promised statutes will mean little if *Goskompriroda* is not strengthened. Kakimbek Salykov,

31. *Id.*

32. *Id.*

33. *Id.*

Chairman of the Supreme Soviet's Committee on Ecology and Rational Use of Natural Resources has promised rapid consideration of a new law. The Committee's Deputy Chairman, Professor Alexie Yablokov, is publicly upset with the delaying and opposing positions taken by the Council of Ministers. The *London Observer* quotes him as calling Prime Minister Ryzhkov, "an ecological illiterate."³⁴

Goskompriroda recently bolstered the case in favor of adoption of a strong statute. In January, 1990, *Goskompriroda* released its first annual report on the state of the Soviet environment. Two hundred thousand copies were printed, produced in both Russian and English for worldwide distribution. The vast air pollution, widespread environmentally induced illnesses, destruction of the Aral Sea and a host of other ecological tragedies are detailed in the report. A companion volume of statistics, published exclusively in Russian, has also been printed and disseminated.

IV. The Economic Dimensions of Environmental Protection

If the Supreme Soviet and Council of Ministers naively continue to equate the mere creation of *Goskompriroda* with the reality of an effective, modern system for environmental protection, then the environmental degradation trends in the USSR will worsen. Public distrust may then grow, and ironically the supposedly prime economic reform and revitalization would be arrested. In principle, the Soviet Union's leaders understand that waste minimization programs can be profitable; what they need to learn is that a strong, consistent environmental protection regime will facilitate rather than hinder the introduction of modern and ecologically sound new technologies, and that such a regime is essential to achieving the goal of waste minimization.

The Soviet Union's economic reforms can be realized only with a stable and professionally equipped *Goskompriroda* operating under strong environmental laws. As Vorontsov puts

34. Millinship, *Russia: Go Green or Die*, *OBSERVER*, July 16, 1989, at 22.

it, "the birth of *Goskompriroda* was more than thirty years late Therefore, we have to take care of everything at once."³⁵ In the contest of wills between the publicly elected Supreme Soviet delegates and the "business as usual" ministers, the fate of restructuring the economy puts in question the terms under which joint ventures may operate in the USSR.

Business joint ventures are already finding themselves caught up in this net of Soviet countervailing forces regarding environmental protection. There has been substantial international interest in knowing how to comply with the Soviet Union's emerging environmental laws. The emerging laws have been publicized; for instance, Moscow World Service provided the following commentary on the reforms in the January 18, 1988 Decree:

The new antipollution service [*GOSKOMPRIRODA*] will strictly control compliance with antipollution regulations in the development of new technology and will have the right to suspend its application. The industries and farms that previously polluted the environment with impurity now face the risk of bankruptcy in the current conditions of cost accounting and self-management. The government is introducing such a system of heavy fines and sanctions that the timely building or improving of purification facilities will be more lucrative than to continue to damage the environment. Payment for the use of natural resources also comes into effect as part of the new economic policy. Coupled with the principle of cost accounting this measure is to induce the producers to minimize environmental pollution In short, economic levers will be applied in the interests of nature and society.³⁶

Most of these promised reforms have not yet been realized after nearly three years, and this has led to uncertainty about how these Soviet reforms are to evolve. There are understandable difficulties in compliance with Soviet environ-

35. *Supra* note 30.

36. Moscow World Service, Jan. 18, 1988.

mental laws which both Soviet enterprises and foreign joint ventures must plan for and anticipate. Since the laws implementing these policies are only now being elaborated, the more precise standards needed to guide conduct have not yet been established.

Courses in environmental law are only now being established in Soviet law schools, and the knowledge of Soviet environmental law on the part of most Soviet lawyers is still slight. The Soviet bar's present unawareness of the environmental laws will not be a defense if an enterprise or a joint venture is found to be violating the law. It is obviously difficult for either a Soviet enterprise or a joint venture to find legal specialists knowledgeable about Soviet environmental law. This will also retard *Goskompriroda's* efforts at achieving observance of Soviet environmental law.

Foreign investors entering the USSR must understand that there is often a strong local opposition to siting new polluting facilities. With the decentralization of land use authority, a City Soviet may well be able to oppose a new venture even though it has been approved by a ministry in Moscow and is part of an approved joint venture. The "NIMBY" (not-in-my-backyard) phenomena exists in many parts of the USSR today.³⁷ There is a suspicion of indigenous commercial cooperatives, as well as foreign capitalist ventures coming into the USSR. Years of criticism of the market system and western enterprises for past pollution and labor practices have left a residue of popular suspicion. Local Soviets know that their pollution is acute and assume that western pollution is the same; there is little knowledge about relatively clean, modern industrial practices and standards. This attitude has been articulated during debate on the Tyumen projects by the new environmentalist member of the USSR Presidential Council, Valentin Rasputin:

The extraction of oil and gas started in Tyumen quite a while ago. The "casing-head" gas, a valuable raw material for the chemical industry, is being destroyed in huge

37. See Robinson, *supra* note 16, at 399-414.

quantities for no reason. A good master would not, of course, allow such wastefulness. He'd have put the gas into protection a long time ago instead of burning it or just letting it escape into the air.

That's why they decided to act at long last. A good thing? Yes, it is. Foreign companies knock each other over trying to get in on joint ventures in plastics and other industrial products. This is also good, especially if one's pockets are not large and if one has a deficit, continually aggravated by past "projects of the century." The new projects will ostensibly make it possible to repay the credits within five years and then to start turning a fantastic profit — both in roubles and in hard currency. At least that is what the leaders of six ministries think. The ministries want to build these projects — they ran a letter on this score in *Kommunist* (No. 5, 1989)

There has been no desirability study: no economic analysis, no scientific forecasts concerning the supplies of raw materials, no estimates concerning the future demands of the world market or price dynamics. All this has been postponed for afterwards. As we have done countless times before, we'll build it and then we'll see. The *State Examination* Group last May refused to give a positive report, saying that the resolution made on the basis of the USSR State Planning Committee's project was premature. The resolution was adopted anyway.

Wouldn't it be wonderful if the profits in 5 to 10 years' time weren't so dubious, if the risk of taking a loss wasn't so great. Flooding the world market with polymeric materials will inevitably lower the price which will demand increased production to pay off creditors. Which will lower the price even further. "This will produce a vicious cycle," warn the scientists in their letter. They go on to say: "The West is glad to curtail energy-consuming and ecologically hazardous production in their own countries while turning the USSR into a world supplier of polymer raw materials and the Tyumen Region into a world toilet." None of the industrialized countries are major exporters of polymers, because of the unprofitability of exporting them as compared with the export of items made from them.

Europe and America, by the way, are scrapping all

such production and large-size petrochemical plants and moving them farther away from their own borders. But we, by offering a warm welcome for them, have made ourselves vassals and demonstrated our inability to look into the future and consider the well-being of generations to come.

The building of the Tyumen complexes, everything else aside, will curtail the modernization of chemical enterprises in the USSR, leaving them as they are: dirty and environmentally hazardous.³⁸

The view articulated by Rasputin was in effect endorsed by editors of *Moscow News*.³⁹ The Editors included their own commentary on Rasputin's essay. They wrote:

In preparing this article, we reviewed not only the documents, on the basis of which the project was started, but also the criticism of this project in *Kommunist* and the letter (also published in *Kommunist*) from six USSR Ministers who claim the complexes in Tyumen are necessary and will be profitable. We think that in deciding the fate of this "project of the century," it would be worth considering the opinion of Valentin Rasputin, greatly esteemed for these efforts to protect the environment.⁴⁰

The Editors in a subsequent edition carried a "Response" by Valentin Katasonov, an Associate Professor at the Moscow Higher Party School, as follows:

If these [oil and gas chemical complexes in the Tyumen Region] are, in fact, completed, the ecological consequences for Western Siberia and the whole country could be grave. These complexes will produce millions of tons of chemicals, such as ammonia, carbamide, benzene, ethylene, polyethylene and isoprene. Although the plan stresses the need for "ecologically pure" and "no-waste"

38. Rasputin, *Giants: Hard On The People, The Pocketbook and the Environment*, *Moscow News*, Apr. 16-23, 1989, at 15, col. 3.

39. *Id.*

40. Katasonov, *Response; Toxic Clouds over Western Siberia*, *Moscow News*, May 7-14, 1989.

technologies, and the protocols of intent mention of same, I still have my doubts. Why?

1. However ideal, no-waste technologies are currently inaccessible given their high cost and, in some cases, for technical reasons. The damage from possible leaks and pollution will be aggravated by the location of the complexes to be on the banks of major Siberian rivers, such as the Ob and the Irtysh — and also by the natural and climatic features of the Tyumen Region (e.g. low temperatures) hindering the self-restitution of the ecosystem.

2. Since some of the complexes are to be built on permafrost, thawing and ground settling are highly probable. This in turn could cause the cracking of equipment and pipelines which could then lead to chemical explosions.

3. Though our government departments and their foreign partners aim to maximize profits with these joint ventures, it may be at the environment's expense. Our liberal environmental regulations and practices — considerably more relaxed than those in advanced capitalist countries — afford ample opportunity for this.

4. Both Soviet industries and Western companies have long economized on operating expenses by dumping pollutants at night, by pumping liquid waste into underground cavities and by burying solid toxic waste illegally. Soviet and foreign surveys indicate that purifying equipment and automatic control systems designed to monitor technological processes are not operating at many enterprises: they have either been switched off to save money or are faulty.

5. The construction of oil-and-gas chemical complexes will require an enormous infrastructure and auxiliary industries, such as motor and railroads, pipelines, power stations, gas processing enterprises,

steel mills and housing — all of which will further tax the environment. Of course, all projects must be submitted for expert examination to the State Committee for Environmental Protection. But will the Committee have time to process them? The time allotted for construction of oil-and-gas chemical complexes is extremely short. Feasibility studies are to be completed and the joint venture agreement concluded in the first six months of 1989. In the following three months the Ministries are to place orders for production and delivery of equipment. The new complexes should be up and running in 1991. Is this enough time for serious independent analysis of the projects, let alone for considering the results? In the West, expert examination of new projects and subsequent modifications may take years to complete.⁴¹

These expressions of views by Rasputin and Valentin reflect several interrelated perspectives which lawyers and managers for joint ventures should consider. Some areas of Soviet territory ought not be developed, for instance Lake Baikal and its watershed. Where these preservation policies exist, they reflect the strong and legitimate interest in nature protection throughout the nation. On one hand, no foreign investor or Moscow ministry should reject such long-term preservation objectives on short-term economic grounds. On the other hand, some areas could sustain ecologically sound development, but until the scientific baseline data is assembled, there is little evidence on which to premise this finding. Even if sited appropriately, until the local community is educated about the "state-of-the-art" of pollution control, some local leaders will assume the worst and oppose a new venture. Siberian air is badly polluted and even the modest exhausts of new, "clean" industry will aggravate the situation; policies have not yet emerged to integrate the closing of old plants with siting new plants licensed to use new, "clean" technology. There is a suspicion of the capitalist for his past reputation as a despoiler of nature; there is a suspicion of foreigners

41. *Id.*

generally; there is local resentment of the new "home grown" capitalism in the cooperatives and joint ventures. These trends must be considered in the environmental context. Moreover, in most areas the protection of "Mother Earth" combines with prevalent nationalist beliefs, and takes a negative view toward central ministries in Moscow, and toward unproven foreign investors.

V. Practices for Environmentally Sound New Economic Development

Public policy positions such as these just described will shape the content of forthcoming Soviet environmental law. They will be most evident at the local level of government, and among popularly elected legislators. In light of these trends, one may posit several practice suggestions for new economic development to assure observance of the present or new Soviet environmental laws. The effectiveness of the proposed new laws described in the essays in this volume can be measured against these recommended practices.

Joint venture agreements should include express provisions for environmental protection, at All-Union and local Soviet levels. Soviet enterprise plans should have comparable provisions. These provisions should include agreements to meet the accepted international pollution control technologies, and should specify a way to define that standard. This might be accomplished by providing for preparation of a follow-up protocol to be entered into with *Goskompriroda* in Moscow and in the local jurisdiction, which would define what the accepted controls are and how their effectiveness will be measured. Additionally, policies under the new economic development should be adopted which protect the environment and are of equal importance to production objectives; these developments should actively cooperate with *Goskompriroda* in establishing the new regulations for their operations.

All new economic developments should establish training for local employees, for local authorities and for the public inspectors from *Goskompriroda* as to the operations and maintenance of pollution control procedures and equipment.

To do this, the new economic venture in close cooperation with *Goskompriroda* should arrange to assemble a profile of existing environmental conditions before entering an area. In doing so, it must necessarily work with local scientific institutions. This profile will establish the initial baseline data for defining the ambient environmental conditions. Using this information, a new venture can establish that it is *not* responsible for past pollution. Any new venture should also plan to prepare an environmental impact assessment of all new sites and facilities, and arrange for follow-up studies with local scientists.

Every new economic development should conduct public education seminars and information activities. Interdisciplinary educational programs should be held for invited writers, press, teachers, ecology club leaders and others. Articles for the media should be written and disseminated. On site tours and visits of new factories should be scheduled. In like vein, all new developments should seek public comment on scientific studies and impact assessments.

In keeping with the evolving state of Soviet environmental protection policies, budgets should anticipate the introduction of user fees and natural resources severance charges as outlined in the 1988 Council of Ministers Decree. It may be worth exploring whether or not some of the scientific analysis noted above could be arranged with *Goskompriroda* as an in-kind payment of such fees, especially if the local *Goskompriroda* is strengthened in its ability to manage, or the studies are ones the local *Goskompriroda* would want to make itself anyway. Juris-consults, the house counsel in Soviet enterprises and ministries, should assign a lawyer to learn the relevant Soviet environmental laws. Where local opposition to new developments exists, local authorities should be invited to visit a representative modern facility in the USSR or in a western country, in order to establish credibility and accelerate the educational undertakings.

VI. Insights into Forthcoming Soviet Environmental Laws

The effort to structure Soviet environmental laws to en-

courage an environmentally protective economy is obviously still embryonic. The introduction of western joint ventures permits a wider use of the methods which have emerged in market economies. Another significant stimulus to the innovations in Soviet environmental legislation is the proposals of Soviet legal scholars.

In the USSR Academy of Sciences' Institute of State and Law, the Sector on Ecological Law provides the Soviet Union's premiere analytic capacity regarding environmental law. The Sector is the result of pioneering work by Professor Oleg S. Kolbasov, whose legal skills have been essential to initial All-Union statutes on air pollution, wildlife protection, the revision of water use laws, and the introduction of environmental impact analysis in the USSR. Under Professor Kolbasov's direction, a dozen environmental law specialists are engaged in evaluating how law can help the USSR to overcome pollution and other environmental problems. Professor Kolbasov is now a Deputy Director of The Institute of State & Law, and Dr. Alexandre Timoshenko heads the Sector on Ecological Law. The essays published in this volume offer insights by five of these legal scholars from the Sector on Ecological Law.⁴²

The essay by Dr. Mikhail Brinchuk provides the first analysis of how Soviet law should examine the widespread use of chemicals in agriculture.⁴³ Both fertilizers and pesticides have been employed widely throughout the USSR. The U.S. laws have been slow to address this topic,⁴⁴ and Soviet laws are similarly underdeveloped in relation to the extensive pollution of surface waters from agro-chemical run-off.

Most Soviet chemical fertilizer and pesticide rules date

42. These essays were delivered at meetings of the USA-USSR Joint Committee on Environmental Law in Washington, D.C., in June, 1988, convened under Area XI of the USA-USSR 1972 Agreement on Cooperation in the Field of Environmental Protection, *supra* note 15.

43. Brinchuk, *supra* note 3.

44. The Federal Insecticide, Fungicide & Rodenticide Act, 7 U.S.C. §§ 136-136y (1988) (FIFRA) is a relatively recent act, offering little control over applicators. Agricultural run-off of fertilizers in irrigation backwash is exempt from the permit system of the Clean Water Act. 33 U.S.C. § 1342(l)(i) (1988).

from the 1970's. Brinchuk's essay deals with the normative structure of these laws, rather than with their application and enforcement. There is little empirical data to show that these laws have had their desired effect; indeed amidst the vast reorganization of Soviet agricultural management, agro-chemicals have been relegated to a relatively low priority. The training and certification of applicators, and the inspection and control of applications, are largely unregulated activities in the USSR, just as they remain unregulated in much of the rest of the world.

As Brinchuk notes,⁴⁵ Soviet land use laws are silent on this topic. The status of *Goskomomissiya* (State Chemical Commission) under the Ministry of Agriculture did not allow the development of a credible system of dose recommendations, label requirements, and other controls. To be credible, these roles should be established under *Goskompriroda*, but in the weakened state of this fledgling new environmental agency it seems unlikely that a rigorous new inspection and control system for agro-chemicals will emerge.

Brinchuk outlines a concrete agenda for law reform and development. This is an insightful and forthright program, which should be helpful to the Supreme Soviet and *Goskompriroda* as they reshape Soviet law on these subjects. Brinchuk is at work on a book to address these questions more fully.

Just as agriculture is a core economic sphere of activity in the USSR, so is tourism. Soviet law guarantees vacation benefits to all workers, and internal tourism is extensive throughout the USSR. Similarly, tourism by foreigners has been encouraged for years as a goodwill gesture and as a source of hard currencies.

The siting of new hotels, resorts and related infrastructure, and the environmental impacts of human activity at tourist sites pose challenges for environmental law. O.B. Romanova's essay⁴⁶ on the environmental aspects of tourism is a useful contribution to this topic, both within the USSR

45. Brinchuk, *supra* note 3.

46. Romanova, *supra* note 3.

and elsewhere. In many nations, the only environmental law constraints on tourism relate to developing tourist infrastructure such as the land use laws (e.g. zoning in the United States)⁴⁷ or environmental impact assessment rules.⁴⁸ In parks, there are rules controlling visitors in most nations.⁴⁹

Romanova identifies the incremental impact of many tourists on the natural environment as a serious issue. Now that the authority over *zapovedniki* and other natural areas is vested in *Goskompriroda*,⁵⁰ there is one authority which could establish a regulatory framework for encompassing environmental impact, park use rules, and inspection and control procedures. In addition, some broader land use legislation for tourism would be useful, such as the decisions to designate most of Lake Baikal and its watershed as park and protected areas intended primarily for new tourism and not for forestry, mining or manufacture.

Romanova's essay examines the conservation and recreational aspects of nature tourism and historic site visitation. The essay correctly stresses the need to integrate education of tourists with establishing sound environmental management systems for natural areas. The essay then notes that there does not yet appear to be a need to regulate access to some natural areas to prevent overuse and maintain levels of visits which the natural area can sustain. There is, however, no empirical showing of why access should not be managed to prescribe and prioritize such access especially where overuse may be a factor as in Odessa.

A chief value of Romanova's essay is its statistical examination of the inspection and control activities, and park maintenance activity. These statistics are modest, given the vast-

47. Hotel use or resort zones are often used by municipalities to isolate them from other inconsistent use.

48. See National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370(a) (1988), or its state law analogues, State Environmental Quality Review Act (SEQRA), N.Y. ENVTL. CONSERV. LAW §§ 8-0101 to 8-0117 (McKinney 1990).

49. For rules controlling visitors in National Parks of the United States, 36 C.F.R. § 2 (1989).

50. See Robinson, *supra* note 1, at 375; *Zapovedniki* is the preservation of natural habitat in scientific sanctuaries. *Id.* at 364.

ness of the Soviet Union. Moreover, while multiple use of park lands is endorsed, there is no discussion of what sort of park master plan should be required to assure that the multiple uses are compatible. Notwithstanding these points, Romanova's essay shows that there is a growing recognition that tourism is an important dimension for new environmental laws to address.⁵¹

Both tourism and agro-chemical issues could be resolved by new land use laws. Soviet land law has been revised generally since Iconitskaya prepared the essay on legal protection of land.⁵² Nonetheless, Iconitskaya's paper provides a useful point of departure for understanding the concepts underlying the debate over how to reform Soviet land law in order to create an environmental protection "land ethic" in the sense that Aldo Leopold urged.⁵³

Land use in the USSR has been categorized in terms of its developed or exploited potential. Preferences for agricultural land uses have been evident, Iconitskaya observes. Despite such a juridical preference, conversion of arable land to non-farm uses has advanced, not unlike trends in the United States.⁵⁴ The essay does not treat comparable incursions into lands set aside as parks or the nature sanctuaries for scientific research and protection known as *zapovedniki*.

The use of mere economic gain as a justification to override strong preferences for maintaining prime agricultural land or nature protection is accepted by Iconitskaya uncritically.⁵⁵ The essay fails to examine the jurisprudential basis for these legal arguments, noting that the economic justifications to convert agricultural lands "are beyond the limits of jurisprudence."⁵⁶ Any effort by the Supreme Soviet, whose Environment Committee Chairman Salykov has read Aldo Leopold's works, to reshape the USSR's land legislation toward

51. Romanova, *supra* note 3.

52. Iconitskaya, *supra* note 3.

53. A. LEOPOLD, A SAND COUNTY ALMANAC, 217-241 (1971).

54. Prime farm land losses have been documented by the U.S. Soil Conservation Service.

55. Iconitskaya, *supra* note 3.

56. *Id.*

environmental stewardship will be difficult so long as the short-term economic exploitation justification is ascendant.

In the absence of a strong environmental protection policy, land use decisions by the Council of Ministers will reflect the narrow interests of the existing ministries. It is not clear that *Goskompriroda* can defend *zapovedniki* from the entrenched minerals and forest development ministries and enterprises, any better than could the Central Laboratory for Nature Conservation of the former Agricultural Ministries. Iconitskaya sets out the formalistic rules which establish the authority to make land use allocations, without addressing the substance of the decision making process. If the procedures Iconitskaya describes are to be followed, why is prime agricultural land lost?

Similarly, given the laws on soil conservation and protection, why is erosion and even desertification a persistent problem in parts of the Russian Republic and elsewhere in the USSR? Iconitskaya notes that *Goskompriroda* is to have an oversight role to secure such environmental protection, but since relatively little control has been exercised in the past and no new administrative or personnel resources have been applied to securing observance of these rules, it is doubtful that *Goskompriroda* can or will do much to address such problems. Enforcement and compliance are severe problems, which perhaps only forthcoming proposed criminal sanctions can address. Current fines are entirely unrealistic.

Beyond the legal issues within the USSR addressed by these three essays, there are the environmental interests of the USSR in the area of Eastern Europe and internationally. The former topic is addressed by A.V. Leont'eva⁵⁷ in the discussion of how the Council of Mutual Economic Assistance (COMECON) could address the region's transboundary or shared environmental problems. Leont'eva offers a glimpse at Soviet policy and law as of 1988. There have been enormous changes in COMECON itself, and within each of the Eastern European nations since then. Although the communist sys-

57. Leont'eva *supra* note 3.

tems in each have been replaced by new, relatively democratic elected administrations, each nation retains many aspects of a heavy-handed centrally planned economy, tied into the USSR. It will take time to disentangle these ties, and to substitute for them a western market model.

Moreover, the pollution levels in the Eastern European region are enormous. Transnational work to abate pollution was emerging as a recognized priority in the region long before the breakup of the communist regimes. This recognition led to the sorts of proposals for COMECON which Leont'eva describes.

Doubtless some of the planning for "ecologization" of development has identified obvious priorities, such as plans to install standard pollution abatement technology, or to conserve energy and materials. On the other hand, all the prior efforts to establish common elements of a Five Year Plan among COMECON nations will be replaced by new negotiations to disenthral each Eastern European nation's economy from the binds of the COMECON plan. The Leont'eva essay is useful in suggesting evident questions: Can or will environmental protection be calculated at every step of these negotiations? Will COMECON nations try to embrace the same environmental standards as the European Economic Community (EEC)? How long can they persist as pollution havens? Even with change in COMECON how shall the USSR assert its demands for acid rain damage to Byelorussia and other areas from Czechoslovakia or Poland? Perhaps COMECON is a better forum than bilateral talks to sort out the responsibility issues related to the years of industrialization in Eastern Europe. Little attention has been paid to a new, phoenix-like, life for COMECON's: "Permanent Commission on the Protection of the Environment." Leont'eva's article offers a point of departure for thinking about these issues.

Finally, there is the USSR's role in the emerging framework of international environmental law. Alexandre Timoshenko is a well published and thoughtful scholar on

such issues, and his essay⁵⁸ compliments the other presentations by setting Soviet environmental policies in an international perspective. Timoshenko has addressed ecological security on other occasions.⁵⁹ His text here elaborates these views usefully.

There can be no effective national security unless the biosphere as a whole is protected. The success of the Soviet system of nature protection in the USSR is critical to the success of all other efforts elsewhere. No part of the biosphere can be left unprotected, and international law gradually leads toward harmonizing these national efforts.

By incorporating such a position into Soviet foreign policy, the USSR reinforces its domestic policy values moving toward establishment of an effective municipal environmental law system. Timoshenko recognizes that changes are needed in the United Nations system of international cooperation in order to promote creation of comparable environmental protection programs in all nations and regions. He offers basic policies and principles toward these ends. His article, however, is silent on the pragmatic measures needed to implement those principles. If the Soviet Union cannot establish an effective *Goskompriroda*, it cannot, by Timoshenko's own biospheric definition, serve as a role model or even a credible advocate of such reforms within the UN systems or in other countries.

VII. Conclusions

There is great ferment in the USSR's legal system at present. President Gorbachev is basing his reformation of Soviet government on a legal foundation and on a legal process as much as possible. The debate on shaping new environmental laws is still in its relative infancy in the USSR. It will evolve substantially, as it must if pollution is to be brought under

58. Timoshenko, *supra* note 3.

59. Timoshenko, *Protection of Wetlands by International Law*, *supra* note 1; Timoshenko, *The Problem of Preventing Damage to the Environment in National and International Law*, *supra* note 1; Timoshenko, *International Legal Problems of Environmental Protection in the European Region*, 4 CONN. J. INT'L L. 441 (1989).

control and the USSR shifts to sustainable economic and social development.

The essays which follow suggest the sorts of proposals which are being debated as the Supreme Soviet and *Goskom-priroda* struggle to shape and adopt the future environmental laws of the USSR.