

THE HISTORY AND ORGANIZATION OF THE RUSSIAN PETROLEUM LEGISLATION PROJECT AT THE UNIVERSITY OF HOUSTON LAW CENTER

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I. INTRODUCTION

In August 1991, the University of Houston Law Center embarked on a project of historic dimensions: to lend assistance to the Soviet Union and the Russian Republic in the drafting of Western-style legislation to govern the world's largest petroleum industry. A year later, the Law Center had largely accomplished this task, although our "client" was now the independent country of the Russian Federation. This article describes the organization, process, and some of the substantive issues confronted and resolved in this drafting project. As Executive Director of the University of Houston Russian Petroleum Legislation Project (UH Project or Project), I oversaw the substantive work of the Western Working Groups assembled to draft in four major areas, and served as the Houston "funnel" for processing drafts, translations, schedules, media relations, and the myriad of other details that swirled about the Project. I also served as a Co-Reporter on the Conservation and Environment Working Group. While my position at the end of this funnel was an important one, I cannot overemphasize the contributions made by the forty or so members of the Working Groups, especially the Reporters, who submitted proposed drafts, detailed comments and suggested changes, and redrafts and re-redrafts of these lengthy documents within incredibly tight schedules dictated by the needs of the Russian Federation.

Many other projects are currently underway in Eastern Europe, in other countries of the former Soviet Union, and in the Russian Federation itself, to provide Western legal advice

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in the drafting of everything from new constitutions to local zoning laws.¹ Most of these other projects are designed to provide general advice, statements of principles, or commentaries on already-drafted documents. In contrast, the UH Project was designed to provide a very concrete end product: model laws to govern one particular industry. The UH Project drafted specific laws in a sustained year-long, word-by-word, line-by-line, cooperative educational process that exemplifies one of the most significant "international technology transfers" in the legal services industry. For those engaged in similar projects, this overview of the history and organization of the UH Project may provide some insights into the challenges ahead.

The model laws proposed by the UH Project appear in a companion to this volume.² Each of these laws has been discussed with a counterpart group of Russian experts who will prepare the final legislation for submission to the Supreme Soviet. The laws are certain to undergo many changes as various Russian expert committees review them. It was never the intent or objective of the UH Project to write the Russian Federation's petroleum laws for them. To think that Russian leaders would turn such a responsibility over to a Western group displays a fundamental lack of understanding of the Russian political scene. Rather, the goal of the Project has been to provide the Russian leadership with an understanding of world practice, and in particular, how the modern oil-producing countries of the world have crafted their laws. Ultimately, Russians will write Russia's petroleum legislation. To the extent that they find the concepts in the proposed laws acceptable, they will restyle them in their own words and format. The proposed laws are educational vehicles that provide Russian decisionmakers with knowledge about world practices in a modern

1. The sponsors of these projects are diverse: the American Bar Association, private foundations, U.S. government agencies, agencies from the European Community, private law firms, management consultants, investment banks, and accounting firms.

2. See PROPOSED PETROLEUM CODE OF THE RUSSIAN FEDERATION, PART I, LICENSES (1992) [hereinafter PROPOSED LICENSING ACT]; PART II, CONSERVATION AND ENVIRONMENTAL PROTECTION (1992) [hereinafter PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT]; PART III, OIL PIPELINE TRANSPORTATION (1992) [hereinafter PROPOSED OIL PIPELINE TRANSPORTATION ACT], 15 HOUS. J. INT'L L. 809 (1993) (companion volume).

market economy from which the Russians will choose legislation suited to their particular circumstances.

II. EARLY HISTORY OF THE PROJECT

A. *Before the Coup*

The UH Project began in June 1991 with an invitation from the Oil and Gas Minister of the Union of Socialist Soviet Republics (the Soviet Union or USSR) to Professor Paul Gregory³ at the University of Houston to create a team of Western legal experts to assist the USSR in drafting "civilized" oil and gas legislation that would bring the USSR into the world community. The city of Houston is well known to Russians as the energy capital of the world. There is a Soviet saying that "in oil, all roads lead to Houston."

At the time of this invitation, the USSR consisted of fifteen member republics, of which the Russian Soviet Federated Socialist Republic (the Russian Republic or the RSFSR) was the largest. The RSFSR contained about ninety percent of the oil and gas resources of the Soviet Union. Relations between the Soviet Union, headed by Mikhail Gorbachev, and the fifteen Republics were fraying. The Russian Republic, with Boris Yeltsin at its head, was proceeding to enact its own laws in many areas, moving this republic more quickly toward market reforms and openness. Consequently, any project that attempted to draft legislation only for the USSR was likely to find itself in the middle of a "war of laws" between the USSR and the Russian Republic.⁴ Professor Gregory, supported by UH Law

3. Paul Gregory is the Cullen Professor of Economics and Finance at the University of Houston and has long specialized in the study of the Soviet economy. See, e.g., PAUL GREGORY, *THE SOVIET ECONOMIC BUREAUCRACY* (1990); PAUL GREGORY & ROBERT STUART, *SOVIET ECONOMIC STRUCTURE AND PERFORMANCE* (4th ed. 1970). Much of the information in this first section of the article is derived from memos prepared by Professor Gregory as background material for the UH Project participants.

4. The Soviets looked to the United States rather than to Europe for drafting experience because the United States had so much history and experience as a federal union of autonomous states which could be analogized to the Soviet Union's relations with its 15 republics. Within the Russian Republic itself, similar problems of federalism abound. See discussion *infra* in Section III(C) of this article.

Center Dean Robert Knauss, proposed that the Soviets form a unified expert group to draft petroleum legislation⁵ for the USSR and the Russian Republic simultaneously. An international team of Western experts would then be assembled to advise this group. Such a unified project would necessarily be quite large in scope, with the proposed major areas of legislation being petroleum licensing, conservation and environment, pipeline transportation, and tax and fiscal policy.

Serendipitously, the RSFSR Minister of Justice, Nikolai Federov, attended a Houston meeting of the Texas State Bar Convention in June 1991. He was briefed on the proposed UH Project, and information was relayed to Igor Gavrillov, the Deputy Prime Minister of the Russian Federation. At that time, the RSFSR was preparing an Underground Resources Code that would serve as an "umbrella law" for all subsequent regulation of minerals, including oil and gas.⁶ Gavrillov's office invited a Western expert team to Moscow to review this draft in August, when it would be finalized. Neither the Soviets nor the Russians had the hard currency resources to bear the costs of providing Western drafting assistance for a project as large as the proposed Petroleum Legislation Project. Yet funding sources had to be provided quickly in order to meet the Russians' projected deadline of submitting petroleum legislation to their Parliament by December 1991. The Western side did not want the Project to be viewed as a U.S. government initiative, so no governmental aid was sought. An obvious alternative source of funding was the international oil industry. Many of the major oil companies were actively pursuing oil and gas deals in the Soviet Union through direct negotiations with government officials. The frustrations and delays inherent in this process

this article.

5. In this article, as in the proposed laws in the companion volume, the word "petroleum" means both crude oil and natural gas. See, e.g., PROPOSED LICENSING ACT, art. 2.

6. By "umbrella law," the Russians meant a law that would establish the fundamental principles for the development of all natural resources. Subsequent laws would provide additional details for particular minerals. The governmental subunits within the Russian Republic would be able to enact their own legislation governing underground resources as long as their laws were consistent with the umbrella law. Thus, it was quite important to potential investors in the Russian petroleum industry that the umbrella law establish a workable framework for future action.

were legion. Without a stable legal framework in the Soviet Union, no oil company knew if it had negotiated with the right officials, or whether its contract would be repudiated by a change in personnel or by the passage of subsequent laws. Long-term investments that committed billions of dollars to the development of the Soviet oil and gas resource would be less risky with established rules of the game that placed all players on a level playing field. However, these large oil companies were increasingly barraged with requests to support similar drafting projects. How could they be certain that the UH Project was the one to support?

The Soviet side understood that the initial financial resources for the Project would have to come from the energy companies. The Soviet and Russian officials were satisfied that the University of Houston's standards of academic integrity and the independence of externally-supported research would ensure impartial legislation that met international practice and that fairly balanced the needs of the host country with those of private investors. The University of Houston Law Center has great strength in the areas of international law, energy law, environmental law, and tax law, and clearly had the intellectual resources to lead the drafting effort,⁷ which would be coordinated by Professor Gregory who spoke Russian and had invaluable longstanding contacts with Soviet and Russian officials. Dean

7. The Law Center offers a Masters of Law Program in International Law, Tax Law, and in Energy, Natural Resources and the Environment. Professor Gary Conine teaches Oil and Gas, International Energy Transactions, Federal Energy Policy, Advanced Oil and Gas Contracts, and Commercial Law. Professor William Streng teaches international tax and just completed editing a leading treatise called *DOING BUSINESS IN CHINA*. I teach Oil and Gas, Environmental Law, Advanced Oil and Gas Conservation, Water Law and Federal Energy Policy. Other members of our faculty specialize in related areas. Professor Sanford Gaines is a leading expert in international environmental law, and Professor Richard Westin in tax law. Together, they had recently edited a book surveying the use of environmental taxes in countries around the world. *SANFORD GAINES & RICHARD WESTIN, TAXATION FOR ENVIRONMENTAL PROTECTION: A MULTINATIONAL LEGAL STUDY* (1991).

Knauss, an able fundraiser, would handle relations with sponsors and the Law Center Foundation (the funding vehicle), and would oversee any major decisions affecting the Project or the Law Center. However, the scope of the proposed project clearly required an additional position. Because the Project was coming to life during the summer on such a short time fuse, any participation by professors in the fall semester would be on top of full teaching loads and other commitments. The Project needed a full-time director, knowledgeable in oil and gas law, experienced in leading large drafting projects, and available for frequent trips to Moscow to assure coordination between the Western and Soviet/Russian working groups. George Hardy, a former Dean of the Law Center and a nationally recognized expert in oil and gas matters, was contacted and expressed interest in taking a leave from private practice to join the Project for its scheduled duration of one year.

With these enthusiastic, albeit conditional, expressions of support from the Soviets, Russians, oil companies, and UH Law Center academics, Dean Knauss, Paul Gregory, and George Hardy planned an exploratory trip to Moscow in August 1991. One purpose of the trip was to provide the requested assistance to Russian drafters of the Underground Resources Code. However, the major objective of the trip was to establish agreement with the Soviet/Russian side on several principles essential to the commitment of the University of Houston and its potential sponsors to the UH Project. First, the University needed agreement on a solid organizational structure which would allow the joint Soviet/Russian expert group to cooperate in a timely fashion with Western expert groups to produce legislation to meet legislative calendars. It made little sense to draft in an ivory tower and produce a "perfect" set of laws long after the Soviet/Russian parliaments had already enacted legislation. Also, the Project needed firm assurances that the Soviets and Russians were organized in a coordinated team. Second, those sponsoring the Project needed reasonable assurances that the products of the joint Western/Soviet/Russian efforts would be submitted to the appropriate legislative bodies and their expert commissions. Again, it would be a waste of time and money to draft laws that simply gathered dust on the shelf of a research institute in Moscow. Third, assurance was needed that the joint Western/Soviet/Russian committee of experts would serve to coordinate all international efforts that involved drafting oil and

gas legislation so that duplication and unnecessary competitive undertakings were prevented. Finally, the University of Houston team wanted to identify the specific substantive areas on which the Soviet/Russian side wanted advice and drafting assistance.⁸

The Moscow trip was scheduled for August 20, 1991, the day that the coup began. Gorbachev had scheduled August 20 for the ceremonial signing of a new union treaty with the presidents of the Russian and Kazakh Republics. This treaty would have transferred substantial power over taxes, natural resources and even security matters to the Republics, threatening the centralized control by the Kremlin that had dominated the politics of the Soviet Union under the Communist party.⁹ The coup's quick demise promised an era of quicker reform, but also greater political uncertainty.

The UH team delayed the scheduled trip until August 25. When the team arrived, the USSR organizations with which it had intended to work no longer functioned or had been placed under RSFSR supervision. The Yeltsin government was calling for quick enactment of market-oriented business laws that

8. The working documents prepared for the Moscow trip state:

The purpose of the Joint Petroleum Legislative Drafting Committee is to assist the Soviet Union and the Russian Republic in adopting a clearly articulated, comprehensive legal regime for the governance of the petroleum industry that is both attractive to foreign investment and will serve fully the legitimate interests of the Soviet Union and the Russian Republic. Such a regime must adequately protect Union/Republic interests in the sharing of revenues and also provide adequate energy supplies for domestic needs, conserve natural resources, and protect the environment. At the same time it must accomplish the purpose of attracting foreign investment in a highly competitive world market for investment capital. The attractiveness of any such regime involves . . . the creation of an understandable and stable legal regime The success of the legislative drafting project rests with the Soviet/Russian Expert Group and their ability and authority to draft, present, and defend legislation to the relevant Union and Republic government bodies The Western Expert Group will time its activities to correspond to the Soviet/Russian legislative calendars.

9. *Special Report on the Russian Revolution*, TIME, Sept. 2, 1991 at 33. The complete text of the Treaty on the Union of Sovereign States was published in *Izvestia* on August 15, 1991. *Treaty on the Union of the Sovereign States*, THE CURRENT DIGEST OF THE SOVIET PRESS, Sept. 4, 1991, at 21, available in LEXIS, Nexis Library, CDSP File (giving a complete translation of the treaty text). The treaty would have changed the USSR from the Union of Soviet Socialist Republics to the Union of Soviet Sovereign Republics. Article 8 of this treaty stated that the land and its mineral wealth and natural resources belonged to the republics. *Id.*

would attract foreign investment and hasten the incipient market reforms begun under Gorbachev.¹⁰ The Underground Resources Code was considered of primary importance to this effort. Therefore, the UH team was in the right place at the right time to assist in the Russian effort to transform their economy. For the next two weeks, the UH team worked with the Russian drafters in the Russian White House, still surrounded by the barriers erected to protect Yeltsin and the reformers from the Soviet tanks sent by the putschists.

B. The Underground Resources Code

The UH team's work in Moscow during the drafting of the Underground Resources code was the final catalyst in the creation of the University of Houston Russian Petroleum Legislation Project. The draft Underground Resources Code prepared by the Russians was a lengthy document that had already been widely circulated in the West. It read like a traditional Soviet decree, detailing the organizational structures and rules that would govern resource development. The draft was not a suitable foundation for building a market economy in energy. Rather, it perpetuated a system in which enterprises were strictly regulated in their production and development decisions. Over the course of several days of discussions, the UH team stressed several key points to creating a market system in energy:

1. Energy enterprises must have freedom to determine their level of output and input combinations.
2. Energy prices must be allowed to reflect their true value. Firms will not invest in energy projects unless they expect a profit; consumers waste energy when it is sold at subsidized prices.
3. Prices should not be used as an instrument of social policy because the market will not send efficient

10. By decree of Russian President Yeltsin issued August 23, 1991, "On Ensuring the Economic Foundation of the Sovereign RSFSR," the Russian Council of Ministers was instructed to prepare proposals by January 1, 1992 to license the prospecting for and mining of minerals on RSFSR territory, including the participation of foreign juristic persons in the licensing process. *Yeltsin Names Own Men to Run Provinces; Yeltsin Decree Lays Economic Foundation for a Sovereign Russian Republic*, THE CURRENT DIGEST OF THE SOVIET PRESS, Oct. 2, 1991 at 22, available in LEXIS, Nexis Library, CDSP File.

signals. Direct income subsidies and tax policies are better instruments for pursuing social goals. Any system of multiple prices for energy—low prices for domestic deliveries and world market prices for foreign sales—encourages corruption and the diversion of goods to a black market.

4. The fear of monopoly power in minerals should not be used as an excuse to delay the transition to a market economy. Crude oil, natural gas, and coal are produced in competitive worldwide markets. Where natural monopolies exist in electricity and natural gas transmission, Western practice establishes regulatory commissions to control rates and assure nondiscriminatory access. The best way to prevent monopoly is to ensure freedom of entry to all parties and to recognize the price-equalizing benefits of middlemen.

5. Complicated and overly burdensome tax systems should be avoided or private enterprise will not flourish. The Russians had already proposed a special tax on minerals. This "supertax," as they called it, was considered a political necessity, especially to prevent "super-profits" to private enterprises developing the country's oil and gas wealth. In this case, the UH team advised that the tax should be structured so that it was predictable and allowed a fair rate of return to private investors.

The Russian drafters of the Underground Resources Code came from various research institutes and were experts on the land code, mineral pricing, conservation, mine safety and ecology. The drafting committee was under the direction of the then Deputy Economics Minister, Vladimir Lopukhin. After several days of discussions on the general principles described above and on the problems of Russia's transition to a market economy in energy, the Russian committee was prepared to rewrite the proposed Underground Resources Code, starting largely from scratch. The Russians divided into smaller groups to redraft, and George Hardy prepared a Western-style resources code for them to use in their redrafting efforts.

Throughout the discussions, the Russian leadership and the expert committee showed a resolve to write laws that would encourage foreign investment. The notion of "world practice" was pivotal in the discussions. The Russians hungered for

knowledge of what other countries—the United States, Canada, Norway, Great Britain, Australia, and others—did to ensure competition, maximize host country revenues, attract investment, and protect the environment in petroleum development. On Friday, August 30, the start of the Labor Day weekend, the following fax arrived from Moscow, requesting that Professors Conine and Weaver prepare papers for the Russians on the following topics:

1. A paper summarizing international petroleum licensing systems.¹¹
2. Summaries of federal and State of Texas leasing policies and copies of bid and lease forms.
3. A summary of the model Administrative Procedure Act.
4. A primer on certain antitrust laws in the United States.
5. The Interstate Oil Compact Commission's Model Conservation Act.
6. A brief paper on the rights of surface owners when the mineral estate is owned by other private parties, and the rights of way and access rights of oil and gas lessees over federal lands in the United States.
7. The distribution of revenues between the federal and state governments from offshore oil and gas resources and in Alaska.
8. Data on the tax burden imposed on oil companies in the United States including all taxes and fees, such as royalties, bonus, rentals, severance taxes, income taxes, franchise taxes, sales taxes, and windfall profits taxes.
9. A summary of the Economic Stabilization Act of 1970.¹²

11. This paper, and one titled *Introduction to the Legal Structure of the U.S. Oil and Gas Industry*, had already been completed by Professor Conine and were being translated.

12. For those Westerners whose memories have dimmed with time, the Economic Stabilization Act of 1970 gave the President power to impose wage and price controls. On August 15, 1971, President Nixon shocked the nation by imposing a 90-day freeze on wages, prices, and rents as part of his inflation control program. This temporary freeze hardened into permanent price and allocation controls over crude oil and petroleum products after the shortages brought on by the Arab oil embargo in late 1973. Congress imposed public utility-type controls over the domestic petroleum industry, regulating to whom and at what price crude oil and refined products could be sold. Natural gas production was already subject to much federal price regulation. Congress also passed the Crude Oil Windfall Profit Tax Act of 1980 which imposed a tax of between 30% and 70% on sales of crude oil after the doubling of world oil prices in the wake of the Iranian Revolution of 1979. One Russian expert, well versed in

These papers were faxed to Moscow three days later. From the Houston end of things the UH Project had begun.

C. *The Protocol*

George Hardy returned from the Moscow trip on September 18, 1991, with a westernized draft Underground Resources Code in hand, with a protocol signed by Deputy Prime Minister Gavrillov of the Russian Republic stating that the UH Project would be fully supported by the RSFSR,¹³ and with an additional letter of support for the Project signed by Vladimir Lopukhin. These documents contained adequate assurances of Russian authority and support for the Project, enabling the University of Houston Law Center to secure major funding from potential oil company sponsors and to commit the academic resources of the UH Law Center to the Project. According to the discussions with Deputy Economics Minister Lopukhin, all drafting initiatives in the oil and gas area would be funneled through the UH Project, although the Ministry reserved the right to have the final draft laws reviewed by independent parties acting directly as representatives of the Russian government. The resulting draft legislation proposed by the Project would be submitted to the Russian parliament. Mr. Lopukhin's letter pledged that his assembled committee of experts in the executive branch would cooperate closely with the Chair of the Committee on Industry and Energy of the Supreme Soviet of the RSFSR. This legislative liaison would help assure that the Project's work would be submitted to the legislative branch of government. The letter of support stated that Mr. Lopukhin was confident that the draft petroleum law would be presented to the Supreme Soviet by the end of December 1991. This left less than four months to prepare the model laws. At this turning point in Russia's history, time was of the essence.

these U.S. laws, asked the UH team why Russia should trust the market to work in oil and gas if the United States had no such faith.

The Russians also asked for a summary of the general principles of U.S. constitutional law regarding the takings clause of the Fifth Amendment and cases on regulatory takings. This memo was supplied by Mark B. Oliver of the law firm Mangham, Hardy & Rolfs.

13. See PROTOCOL OF THE MEETING WITH THE PRIME MINISTER OF THE RSFSR, I. T. GARILLOV, Sept. 2, 1991, *infra* app. A.

Within a few short months, the Russian Republic ceased to exist. The fifteen republics of the Soviet Union became independent countries. Eleven of the former republics formed a loose alliance called the Commonwealth of Independent States. The Russian Republic became the Russian Federation, or simply Russia. The UH Project officially became the Russian Petroleum Legislation Project, without a Soviet Union component.

D. Organization of the Western Side

Between September 24 and October 1, the UH core team organized groups of Western experts to work on five defined pieces of legislation, described as follows:

1. Licensing

This group would draft model legislation governing the contractual relationship between the Russian Republic as host country and private companies that seek to invest in the exploration and production of oil and gas on republic territory. The topic includes dispute resolution and administration: how should the Russian Republic structure its agencies or ministries to provide for effective regulation through administrative processes?

2. Conservation and Environment

This topic includes the manner in which oil and gas wells are drilled, completed, produced, plugged, and abandoned; and sound reservoir engineering practices to assure maximum ultimate recovery of oil and gas. Generally, all matters related to the physical and environmental safety of oil and gas operations and the maximum efficient use of a valuable nonrenewable resource fall within this topic. This group would require advice as to what existing environmental laws in the Russian Republic may already provide for mitigating adverse impacts on the land, air, and water. This topic also includes proposals for administering and enforcing the conservation and environmental laws through expert agencies and a permitting and monitoring system. Special geographic conditions, such as

drilling on tundra or wetlands, in offshore areas and in lakes, should be addressed.

3. Tax and Fiscal

A tax regime is critical to the goal of creating an economic environment attractive to investment and to the legitimate interests of government in receiving a fair portion of the wealth produced from oil and gas. This topic interfaces with Licensing: what share of production or its value will be payable to the government as grantor of exploration and production rights in the form of royalties. This topic also addresses the treatment of foreign taxes and royalties in the investor's home country.

4. Pipeline Transportation

This topic covers the regulation of oil and gas pipelines. Because pipelines are often natural monopolies, government regulation based on some sort of public utility model may be appropriate. If sufficient competition exists between pipelines, auctioning or brokering rights to pipeline capacity may be considered. Assuming that pipelines are to be privatized, what is the optimal regulatory structure to assure stable investment expectations and encourage competitive access to the pipeline infrastructure?

5. Intellectual Property and Technology Transfer

This topic includes the protection of patents, trade secrets, and confidential information. The Russian Republic should have a modern system for protecting these property interests. Ideally, the legislation would apply to all industries and to all republics so that foreign investors do not face conflicting codes for different industries and different geographic areas.¹⁴

In addition to these five drafting topics, the Working Groups were alerted to three particular issues of economic

14. Memorandum Prepared for the UH Russian Petroleum Legislation Project (Oct. 1, 1991) (on file with author).

regulation which had dominated much of the discussions with the Russians in September. The first topic was price controls and marketing: how could the price of oil and gas be raised to international levels without imposing unacceptable economic and social impacts domestically? The second was antitrust and monopoly: how could current state monopolies be restructured so that they do not become private monopolies?¹⁵ The third pressing issue was the transition to privatization: how should the existing oil and gas industry in Russia be structured? Should the Republic form a state oil company on the Norwegian or Mexican models? Or should the Republic privatize all operations, retaining ownership of the minerals and acting as lessor or licensor to private entities?

All Working Groups were alerted to the need to consider these issues relating to the transition to a market economy when preparing for discussions with the Russians. However, the Project objective was not to draft a set of transitional laws that only partially advanced progress toward a market economy, for fear that any such transitional legislation would become permanent. Rather, our goal was to educate Russian decisionmakers about the best of Western practice. After discussions with the Russians, the drafting groups and particularly the Russian drafters, could write specific transitional provisions into the codes to adapt the laws to Russia's circumstances. Our role was to provide advice on such issues, but not to draft a model transitional law.¹⁶

Each Working Group was headed by at least two Reporters, one from the academic world, the other from the oil industry or from law or accounting firms. The Reporters were directly responsible for meeting the deadlines for their group's drafts.

15. Also included in this topic were broader concerns that Westerners would label "federalism" issues: how to assure free trade and competitive conditions between the republic's territories so that one province did not restrict entry or raise trade barriers to the flow of oil and gas in commerce?

16. The UH proposed laws do address how to bring the existing Russian Production Associations into the new legal framework propounded in the laws. See, e.g., PROPOSED LICENSING ACT, art. 21; PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 12. Existing claims to exploration and production rights are protected, but claimants must secure the new types of licenses authorized in the proposed law. Existing Production Associations are given a transitional time period to meet the requirements of the Proposed Conservation and Environmental Act through Interim Attainment Plans.

The oil industry sponsors who supported the Project could name individuals from their companies to serve as members of any Working Group, but the Reporters were selected by the UH core group. The criteria for selecting Reporters was simple: find the most experienced, finest talent available that could dedicate time to meet the December 1991 deadlines.¹⁷

The members of these Working Groups were selected in various ways. The Licensing Group was obviously the "hottest" one and had several industry sponsor representatives. However, the Law Center also wanted to secure the views of smaller oil companies that were interested in investing in Russia. We placed two lawyers on this Working Group, one from Oryx

17. The Licensing Group Reporters were Professor Gary Conine at the UH Law Center, Professor Richard Bentham from the University of Dundee in Scotland, and James Skelton of Conoco, Inc. Professor Ernest Smith of the University of Texas School of Law also served as a Reporter in the early stages of the project, until he left Texas to visit at Harvard Law School. The Conservation and Environment Reporters included Professor Patrick Martin of Louisiana State University, a well-known academic expert who had also served as Commissioner of Conservation for the state of Louisiana, and John McMahon, a former Corporate Environmental Counsel for Shell Oil Co. with extensive experience in federal offshore environmental regulation in the United States. The Tax and Fiscal Group was headed by Professor William Streng of the UH Law Center and two partners from Arthur Andersen, Richard Gordon and J. Ray Jones. Arthur Andersen had already established an office in Moscow, and both men were active participants in other industry and government groups that were tracking the development of general tax legislation in Russia. The Pipeline Transportation Group was headed by Patricia Eldridge Godley, a partner in the Houston office of Bracewell & Patterson. She had worked extensively with the World Bank on petroleum pipeline privatization laws in South America. Her credentials were superb, matched only by her enthusiasm. Already the Law Center was looking for support from the World Bank for the drafting effort. Our contacts at the Bank could think of no one better to join the UH team as our "academic" Reporter. Don Smith, a former Vice Chairman of the Federal Energy Regulatory Commission, now in private practice with a Washington D.C. law firm, became a Co-Reporter. The fifth Working Group on Intellectual Property Law was formed because UH Law Center had received so many questions from the Russians about the confidentiality of seismic information and from Western oil field supply companies about patent protection during technology transfers. This group was headed by Paul Janicke, a nationally recognized practitioner of patent law who was shortly to become the Institute Professor of Patent Law and Co-Director of the Intellectual Property Institute at the UH Law Center. This group's objective was not to draft a separate intellectual property law for the Russian petroleum industry, but to advise the Russians on the need for a modern patent law applicable to all industry. This group also served as an advisor to the other four Working Groups on intellectual property issues in their areas.

Energy Co. and the other a private consultant to several small companies with potential projects in the Russian Federation.

Interestingly, few industry sponsors placed persons on the Conservation and Environment Group at the start. The UH team invited Professor Nicholas Robinson from the Pace University School of Law, a leading scholar of Soviet environmental law who had worked with Russian environmentalists for twenty years, to participate. He readily accepted, as did two private attorneys with international experience in environmental law. Later on, when the proposed Licensing Code was completed, some industry sponsors turned their attention to Conservation and Environment.

The Pipeline Transportation Reporters pulled together their own group, designed to represent and balance the interests of producers, pipeline companies, and gas distributors alike. The group also included a Ph.D. economist from a management consultant firm and Professor John Lowe of Southern Methodist University. This eclectic group of experts was familiar with every phase of the transportation business. Interestingly, no industry sponsors chose to participate in this Working Group.

The Tax and Fiscal Group included representatives from three sponsors and two other law professors from the Law Center, Richard Westin and Adjunct Professor Roger Bonney. The Intellectual Property Group had three other lawyers as members, one from an industry sponsor and another from a large Houston law firm with offices in Moscow. The third was a Law Center alumnus who, several years earlier, had boldly founded his own practice in patent law with offices in both Houston and Moscow.

The Law Center received many offers of assistance from law firms, investment bankers, and international petroleum negotiators throughout the United States. While these people often had superb credentials, the drafting groups were kept small in order to move quickly. By the end of the Project, about forty people were listed as members of the Working Groups, although some were much more active than others. The work burden largely fell on the shoulders of the Reporters who prepared the first drafts, circulated them; held meetings or lengthy conference calls to discuss the drafts, and then incorporated written or oral comments into the next draft. Working Group members commented extensively on the drafts, and

sometimes prepared particular provisions to put on the table for discussion.

With the Western Working Groups largely in place, George Hardy returned to Moscow to provide further advice on the Underground Resources Code. Professors Conine and Weaver also each spent a week in Moscow in early October 1991, meeting and working with the Russian experts who urgently sought to place this code before the Supreme Soviet in November. A second objective of these Moscow meetings was to organize the Russian side for a visit to the University of Houston to meet with the Western Working Groups and solidify the scope of work for each group.

E. The Russians Arrive in Houston — October 1991

During October 1991, each Working Group prepared background papers to present to their Russian counterparts. These papers summarized Western practices in each legislative area, and discussed a range of acceptable Western alternatives as policy options. During a week of meetings with the Russian expert group at the Law Center in late October, the Western Working Groups sought feedback from the Russians as to the scope and content of the laws to be drafted. Each Working Group met with their Russian counterparts for at least a day to discuss the policy option papers and to learn about the particular circumstances confronting the Russians in each area. Vladimir Lopukhin attended these meetings as Deputy Economics Minister of the Russian Republic and as Minister-designate of Fuel and Energy.

After these meetings, it was clear that drafting could proceed in the Licensing as well as the Conservation and Environment areas. The Western experts in the Tax and Transportation Working Groups needed to gather more information about the existing tax laws and the existing structure of the oil and gas pipeline industry in Russia before proceeding. Thus, Reporters from these two groups travelled to Moscow later in November to gather additional information.

On the last day of the Houston meetings, Mr. Lopukhin announced that, realistically, the Petroleum Law could not be put before Parliament until March 15, 1992.¹⁸ Therefore, the

18. The Underground Resources Code was scheduled to go before the

Project had four months, rather than four weeks, to prepare model petroleum laws. A new master schedule was prepared for the four Working Groups, with each group on a staggered schedule that included producing a draft law, meeting with the Russian experts to discuss it in Moscow, and revising it in time to meet the March legislative calendar. Licensing was to lead the way and be ready by February. The Conservation and Environment Group would come next; then Transportation, and then Tax.

Shortly after the Houston meetings, Mr. Lopukhin was installed as Minister of Fuel and Energy of the Russian Republic. The Russian team that he assembled to work on the petroleum law included many of the same participants who had drafted the Underground Resources Code. Thus, by mid-November 1991, the UH Project had a solid organizational structure in place in both Houston and Moscow, and clearly defined objectives and timetables. Starting from ground zero in August 1991, the Project now involved a core team of University of Houston academics; about forty Reporters and Working Group members from throughout the United States in the fields of law, economics, and accounting; industry sponsors representing international oil companies headquartered in both Europe and the United States; a Moscow office; translators; and soon to join were officials and consultants from the World Bank and the European Bank of Reconstruction and Development.

F. The World Bank and the European Bank

The Law Center's protocol with Russia, its work on the Underground Resources Code, and its Houston meetings with the Russian experts headed by Minister Lopukhin all brought considerable publicity and attention to the Project. The World Bank (Bank) had pledged to offer technical assistance to the emergent Russian Federation to help it develop a market economy. The petroleum industry, with its potential for hard currency sales on the international market, was of special interest to the Bank. As early as October 1991, the University of Houston had contacted the World Bank about sponsoring the Project as part of its mission of technical assistance. The Bank expressed great interest, but was somewhat wary of funding a

pre-existing project that was also sponsored by private industry. However, it was to everyone's advantage to have World Bank participation in the UH Project. The Project had a good headstart and a strong relationship with Russian leadership. The Bank was satisfied that the University of Houston's academic standards and the organization of the work through the Law Center would assure the integrity and independence of the drafting process, yet allow the expertise and advice of industry to be used and heard. The industry sponsors would benefit if the Project were viewed less as an industry initiative. Moreover, private funding sufficed only to continue the Project through December 1991, yet it was apparent to all concerned that the Project needed to work at least through March, and preferably through June 1992 to have a real effect. In early 1992, the World Bank formally became a major sponsor of the Project. The Law Center was named the lead consultant to the World Bank in the drafting of the petroleum licensing and the tax and fiscal law for the Russian Federation. The World Bank then hired other individual consultants, largely from European universities and research institutes, to review the work of the Law Center's Working Groups and to perform certain other defined tasks.¹⁹ These consultants gave a valuable European perspective to the Project. Officials from the World Bank, or their consultants, often accompanied the University of Houston Reporters in meetings with the Russian expert groups.

The European Bank for Reconstruction and Development (EBRD) had also committed to provide technical assistance to the former members of the Soviet Union. In early 1992, this bank contacted the University of Houston about establishing a relationship with the UH Project similar to that with the World Bank. The EBRD became the formal sponsor of the Proposed Conservation and Environment Protection Act and the Proposed Transportation Pipeline Act. Again, this bank provided its own consultants to review the laws proposed by the UH Project.

19. The World Bank Staff associated with the Project included Charles McPherson, Senior Energy Economist, and William Onorato, Senior Counsel of Energy and Mining. The World Bank's consultants included Dr. Peter Cameron, Director of the International Energy Institute of the University of Leiden, the Netherlands; Honore LeLeuch, Economist and Petroleum Consultant with Beicip-Franlab, Paris, France; Professor W. E. Butler, Director of the Centre for the Study of Socialist Legal Systems, University College, London; and Professor Alexander Kemp, Aberdeen University, Scotland.

With the sponsorship of both banks, funds were in place to continue the Project for one full year, as first proposed in the University of Houston's working documents outlining the scope of the Project. While both banks' funding and expertise were invaluable to the Project, the process of scheduling and conducting reviews of draft laws and scheduling meetings with the Russians became even more complicated as more and more players were added to the scene. The distribution list for the Project reports and draft laws now numbered over fifty, and the time zones for London, Washington D.C., Moscow and Houston all had to be accommodated.

III. PROBLEMS, AND SOMETIMES SOLUTIONS

A. *Translation*

The greatest frustration relating to the drafting deadlines was the problem of securing accurate and timely translations of the drafting documents and of other relevant laws. With already tight deadlines, we tried to assure that all parties had at least one week to read the draft laws in his or her own language before being asked to comment. This often meant that translators had only a few days to translate lengthy documents.

We tried to maintain consistency in translating each draft law by always using the same translator for all subsequent revisions. Generally, we could control the English to Russian translations because this work was centralized at the Law Center. However, the Law Center often had no control over the translators used to convert the Russian drafts into English. The resulting translations were often incomprehensible, if not bizarre. Only by going back to the original English document could we ascertain the Russians' probable intent.²⁰

20. The difficulty of translation was aptly illustrated at the start of the Project. In October 1991, Professors Conine and I were asked to help the Russian drafters in the development of what was then termed a Natural Resources Code. I studied the draft code carefully, reading it in the context of its title—a Natural Resources Code or Underground Resources Code. I assumed that the code governed the development of all minerals, such as coal, uranium, and oil and gas. Conversely, I assumed that the code did not cover anything that was not a mineral, such as forests.

When I arrived in Moscow to discuss the code, I asked if the drafters meant for it to include water. Water, though technically a mineral, is considered to belong to the surface estate owner in the United States. Vigorous nods immediately followed my question. I suggested that the drafters expressly so

The translation of specific legal terms proved difficult for several reasons, but over time could be solved, especially when meeting with the Russians face-to-face. For example, while the words "license" and "permit" have the same general meaning, the two words have subtly different legal connotations, and were used differently, especially in the Proposed Licensing Act. The UH Project drafters proposed a conceptual definition of a license as a contract or agreement between the licensee and the Russian governmental authority, as distinguished from the civil law concept of a license as an administrative permit granted by the government. The translations then had to be carefully monitored to ensure that the distinction survived. Another example of confusion arose when the UH proposed laws used the word "relinquishment" to refer to certain areas of land released from a license and the word "abandonment" for the last stage of activity on a well. Translators would often treat the two words interchangeably, or use a new word "extinguishment."²¹ We often did not know if our translation of the draft laws from

state in the law because a Westerner would not naturally assume that ground water was a mineral covered by the law. Complete silence greeted this suggestion. Clearly no Russian would so misinterpret the language of the law.

The discussion then resumed, but veered off into bewildering issues about Metro subway tunnels and the storage of chemicals in basements. Slowly it dawned on me that the document I had read so many times was not a natural resources code. It was a subsoil code. The Russians had severed the surface of the land from the subsurface, literally drawing a line on the horizon of the ground. The surface was to be privatized, and its uses governed and regulated by the Land Code. Ownership of the subsurface was to remain with the state. The state was not simply retaining the minerals; it was retaining the entire physical space underneath the surface. Thus, the code regulated all possible uses of the subsurface, including subway tunnels and deep basements. Other translations of this proposed code were thus titled "Law of the Earth's Interior" and often stated that they were regulating "the bowels of the earth." Foreign as such terms may sound, they more accurately describe the concept underlying the "Natural Resources Code." This one law, which has now been enacted, is translated four different ways: the Underground Resources Code, the Natural Resources Code, the Mineral Code, and the Subsoil Code. These are one and the same law. *Editor's Note: Due to these translation discrepancies, the Underground Resources Code has been cited in this volume as LAW OF THE RUSSIAN FEDERATION CONCERNING SUBSURFACE RESOURCES (Ernst & Young trans., May 5, 1992) (originally published in the Russian Gazette), reprinted in RUSSIA AND THE REPUBLICS LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992).*

21. Technical terms also sometimes completely flummoxed the translator. "Plug and abandon" came back as "slush and abandon" and a "well completion" came back as a "well preservation."

English to Russian caused the problem or if the problem appeared in the Russian to English translation of the Russian revisions to our draft codes.

Words like "state" and "government" caused even greater problems in the English translations of Russian laws, at least at the start of the Project. Did "state" refer to the federal government of the RSFSR or to all its governmental units as a generic whole? Did "government" mean the executive branch or the legislature? If we used the words "certificate of public interest" in the transportation law, would the word "public" be translated as "state," giving the wrong interpretation to a statute that aimed at allowing private pipeline systems to operate under government controls?

Also, because Russian legislative drafting style does not include the use of a section defining key terms used in the law, we could not readily tell if certain words had particular legal significance in Russia. For example, hazardous wastes in the United States form a particular classification of wastes that immediately triggers an entire body of specific requirements under U.S. law. In the translation of the Russian Fundamental Law of the Environment, the words "hazardous," "harmful," and "toxic" often appeared. Were these three synonyms for one Russian word, or were three different Russian words being used because each connoted a different type of waste?

In U.S. environmental law, a hierarchy of increasingly stringent pollution controls are placed on businesses through the use of carefully crafted terms: the best practicable technology, the best available control technology, and the maximum achievable control technology. The differences between "practicable" and "available" and between "best" and "maximum" would surely be lost in translation unless accompanied by lengthy definitional sections. Ultimately, the Proposed Conservation and Environmental Protection Act was constructed in a way that did not require detailed treatment of these terms. Still, in many other instances, considerable time was spent ascertaining whether a Russian revision to our proposed laws reflected a substantive change in the law or simply a poor translation.²²

22. Even among the English-speaking Westerners, "translation" proved a problem. For example, the Proposed Conservation and Environmental Protection Act used the concept of "preventing the waste" of petroleum. This key term has

All meetings with the Russians were conducted through translators, thus doubling the time necessary to say anything. Sentence patterns had to be adjusted to the translator's rhythm and timing. Without fail, every Westerner who first worked through a translator experienced the shock of realizing that his or her normal speech patterns were often fragmentary, dense, or susceptible to serious misinterpretation because of double negatives. With time, sentence patterns became simpler, although even in later meetings, many a Westerner would turn to the translator with a "Let me start over again."

Many of the problems with translation of terms were solved in the face-to-face meetings with the Russian drafters. The UH Project assumed that the Russians would "Russianize" the draft laws and convert them into the style and format familiar to their own legal culture and language. Almost none of the Western Working Group members spoke Russian or knew much initially about Russian legislative drafting style. We proceeded to draft in a Western style, confident that the Russians would revise the drafts to conform to Russian notions. Our focus was on the substance of the proposed laws. In late February 1992, a leading Western authority on Soviet law, hired as a consultant to the World Bank, reviewed the completed proposed Licensing Code and wrote:

The draft follows Anglo-American canons of legislative drafting and in its present form would be unsuitable for the Russian Federation. The expression "Code" would offend traditional Russian concepts of the branches of law "Definitions" have no assured place in Russian approaches to statutory construction, and they may create more mischief than clarity

. . . [The] style of drafting uses extensively terms of the Common Law that are inapt, incomprehensible, or just plain wrong insofar as Russian law is concerned Consider Article 3: the word "act" has no meaning here in Russian law The word "grant" is especially inappropriate against the Russian legal

existed in the vocabulary of petroleum conservation laws in the United States for at least 50 years. Yet environmental specialists at the EBRD considered the word "waste" as a reserved term for environmentalists, to be used only in the sense of "waste discharges." We changed the Act's term to "preventing the wasteful loss of petroleum."

understanding of that term. Moreover the "Government" here operates as a severe term of limitation which would be unacceptable both to the Western petroleum industry and the Russian Federation. There will need to be learned debates about the respective uses of the term "petroleum" and "oil." Further, the term "control" has a completely different meaning in Russian from that intended here: probably within the "jurisdiction" of the Russian Federation would be better.²³

Perhaps fortunately, this memo was received by the UH Reporters after they had already met with the Russian drafters to review the proposed law. Blissfully ignorant of how poorly the draft might be received, the Reporters had thorough and informative discussions with the Russians, who seemed well prepared and not at all confused about the proposed law. Indeed, the definitional section in the UH proposed law avoided the need for any lengthy debates about the terms "petroleum" and "oil." No Russians seemed offended by any of the words used, perhaps because the translator had used the correct Russian terms, or perhaps because the Russian drafters, like the Westerners, converted the translated words into the proper context. The face-to-face discussions enabled both sides to understand the terms used by the other. We proceeded onward, relying on the Russians to do the Russianizing. Translation burdened the time schedules, but not the ultimate communication of Western legal concepts.

B. *The Role of Industry Sponsors*

For understandable reasons, the oil companies that sponsored the UH Project desired to keep a low profile, both in Russia and the West. However, in January 1992, the Project was featured in the *Legal Times*, a weekly Washington D.C. newspaper, under the headline "Big Oil Plays a Big Role Shaping Russia's Energy Laws," with a smaller byline "The Fox, say Critics, is *Building* the Henhouse"²⁴ (emphasis in original). In

23. Letter from Professor William Butler to Charles McPherson (Feb. 24, 1992) (on file with author).

24. Linda Himelstein, *Big Oil Plays a Big Role Shaping Russia's Energy Laws*, LEGAL TIMES, Jan. 13, 1992, at 1, 16-17.

the article, several law professors from other schools and the assistant director of an environmental public interest group questioned the Project's ability to deliver objective advice to the Russian government because of the participation of oil companies in the Working Groups.²⁵

The article did not detail the administrative structure set up by the University of Houston to assure the academic integrity of the Project. Academic Reporters led the drafting work, except for the Transportation Group, which had no industry sponsors as working members. Every word that was transmitted to the Russian group was first reviewed by the UH core academic group. The all-important first drafts of each law were written by the academic Reporters. All subsequent revisions had to pass through the group comment process and through the academic filter. In cases of controversy, the UH team had the final word as to what went into the proposed laws. Pressed by stark deadlines, all parties recognized there was little time to play negotiating and bluffing games in the drafting process. Moreover, in a group setting, few sponsors would risk embarrassment by proposing a provision that was overreaching or not in keeping with accepted international standards. Finally, all sponsors knew that the Project's work would be reviewed by others, not just the World Bank and the EBRD, but by anyone to whom the Russians chose to show the laws. These were not laws that could be secretly negotiated behind closed doors. The laws were intended for open discussion and debate.

Also, the *Legal Times* article failed to recognize how crucially important the Russians considered the participation of private enterprise. To the Russians, having the input of those foreign investors most knowledgeable and most interested in the Russian petroleum industry was critical to the success of the proposed legislation. At the end of the process, the Russian group wanted to be able to present their proposed laws to the parliament with the imprimatur that the laws would attract foreign investment. The University of Houston's unique coalition

25. The article also identified many of the sponsoring companies who had contributed \$100,000 each to the project: Exxon International, Conoco, Amoco, Marathon, British Petroleum, and Shell International. Other smaller contributors included Enron Corp. and the Houston Endowment, a nonprofit foundation. At that time, neither the World Bank nor the EBRD were sponsors of the project. Another major international oil company became a sponsor at a later date. *Id.*

of academics, industry sponsors, and Bank consultants provided the vehicle for securing the comments and advice of the very group that was being invited to expend billions of dollars to revive an industry.

Moreover, the oil companies were a fountain of information. No legal information system in Russia exists which quickly publishes either proposed or final laws. The computerized database services available on Westlaw and Lexis often require weeks to input translations of the laws published in the *Russian Gazette* or other Moscow newspapers. Without access to the stream of laws and decrees enacted daily on foreign investment, currency controls, taxes, the environment, price controls, and federal/regional powers, the Project academics would not have had the necessary background to draft knowledgeably. However, private companies with offices and translators in Moscow were able to provide the quickest and best translations of many of these laws and decrees to the Law Center.²⁶ Through their offices, we tracked the innumerable revisions to the Underground Resources Code as it wended its way through the Supreme Soviet legislative system. The industry sponsors were also a ready source of information on internationally accepted standards developed through industry/government task forces, such as the International Association of Geophysical Contractors' Environmental Guidelines for Worldwide Geophysical Operations, the United Nations Environmental Guidelines for Oil Exploration and Production (UNEP), and API technical documents on onshore solid waste management in E&P operations.

Similarly, the industry members of the Licensing Group possessed decades of experience negotiating international petroleum agreements in every corner of the world. These members often brought carefully wrought provisions to the table to fill in void spaces in the first drafts of the laws produced by the academic Reporters. Where unique conditions in Russia required drafting provisions that did not exist elsewhere in the world, industry members familiar with these conditions could supply draft provisions for discussion. In the review process, the

26. In the Conservation and Environment area, company files supplied Russian documents that we were unable to get from the Russians themselves, such as the ecological impact assessment process adopted by Gasprom (the Russian gas pipeline system) and decrees instituting pollution charges in the Tyumen area.

memos from industry participants often contained perceptive comments, constructive criticisms with alternative drafting language, and detailed corrections of inconsistencies in the drafts. No doubt exists that the participation of industry strengthened the proposed laws.

Still, some interaction between the industry sponsors and the University of Houston was not without tension. The industry sponsors were understandably reluctant to propose provisions against their own interests. For example, Professor Conine provided an outline of all the standard articles contained in an international licensing law and then drafted a proposed law, leaving some provisions blank to be filled in after discussion. One such blank article was "Participation," *i.e.*, the right of a host country to participate as a working interest owner in the profits of the enterprise. This right is often exercised through a national oil company. No sponsor would come forward with a provision on participation, even though this is a common practice in modern international petroleum agreements. Professor Conine later supplied the missing language which was then fully and openly discussed to achieve a fair balance between investor and host country.

From the University of Houston Law Center's perspective, our obligation to provide an objective code to the Russians required that the Project reveal to the Russians any standard or common world practice, notwithstanding that private companies might find the practice objectionable.²⁷ Some industry members preferred not to give the Russians certain provisions unless specifically requested by them. Also, the Law Center drafters were more willing than the industry members to accept the policies and procedures that the Russians seemed intent on

27. To preserve objectivity, in the master schedule outlining the deadlines and procedures for drafting, the Working Groups were specifically instructed to present alternatives where significant policy choices needed to be made. The advantages and disadvantages of various alternatives were to be discussed, and if several alternatives were found to be reasonable, but the Working Group recommended one in particular, the draft law (or commentary to it) should explain why the recommendation was made. Indeed, the guidelines allowed for writing minority reports for possible submission to the Russians if consensus could not be reached within the Western group. The goal was to ensure that the Russians received the full range of advice that the Law Center considered necessary and reasonable to making informed decisions about modern world practice.

adopting in their laws and to attempt to structure the draft laws to fit the Russian system.

The academic Reporters were keenly aware of the potential for conflicts of interest arising from industry input into the draft laws.²⁸ Resort to "international practice," particularly the laws of Norway, Great Britain, Australia and the United States, provided an independent and neutral standard for evaluating proposed provisions. The goal of each Working Group was to achieve a consensus draft. In Licensing and Transportation, a consensus draft emerged without great difficulty. In Conservation and Environment, the final proposed law discussed with the Russian expert group did not have the approval of at least two of the industry sponsors, as discussed further below (in Part IV).

C. *Russian Politics*

The University of Houston Project could not escape being caught in the swirls and eddies of Russia's internal politics, much as we tried to remove ourselves from the fray. At the beginning of the Project, officials from the soon-to-be defunct Soviet ministries and research institutes jostled with the Project's Russian connections. After the demise of the Soviet Union, the Project had to contend with the internal politics of Russia's federated system. Our golden rule was to make no ene-

28. One example of an unhelpful and self-defeating approach to drafting by industry sponsors occurred at the end of the fourth day of intense committee drafting of the Proposed Licensing Act. In joint operating agreements among producers to drill a well, it is common to relieve the company appointed as the operator of all liability to the other participants except in the case of "gross or willful negligence." Such a standard is inappropriate in the relationship between an operator and a host country. This standard was omitted from all parts of the Proposed Licensing Act until the last hour of drafting when a relatively new industry member wrote these words into a provision governing the liability of licensees to host government inspectors. Professor Conine had left the room and the words slipped into the final typed copy. A few days later, Professor Conine reviewed this final draft with World Bank officials who were surprised to find this standard in the law (as was Professor Conine!). The words were quickly deleted—the only change made by the Bank in the draft law. If, in the real world, a Russian inspector were injured due to the negligence of a licensee, it is hard to imagine a foreign licensee that would dispute liability because the negligence was not gross or willful enough. Fortunately, this litigious attitude that treated the drafting sessions as exercises in bargaining for advantage was much the exception rather than the rule. Nevertheless, the UH Reporters felt considerable pressure to maintain eternal vigilance over the drafts.

mies, to listen to everyone who wanted to talk to us, and to avoid becoming involved in intergovernmental struggles for power. Our laws were drafted either naming an anonymous agency as "the Competent Authority" or a generic agency, such as "the Petroleum Conservation and Environment Authority." We refused to recommend any existing agency or ministry committee as the one properly structured to administer the draft laws. We repeatedly observed that these decisions were for the Russians to make. Several examples illustrate the types of political issues that confronted the UH Project.

In October 1991, members of the UH core group travelled to Moscow to help in the continued drafting of the Underground Resources Code. By this time, the Project's work and its sponsorship by private Western companies had been well publicized in Moscow. Evidently the World Bank had preceded us there and had already discussed its possible support for the UH Petroleum Legislation Project. The Bank had announced that it would fund technical assistance to Russia, and rumors were that these funds amounted to several millions of dollars. As explained in Part II, the draft Underground Resources Code was an effort of the Russian Republic, not the Soviet Union. On the day that we were to meet the Russian drafters to discuss problems with this code and to arrange the upcoming visit to Houston to begin work on the petroleum laws, we were summarily ordered to appear before a high-ranking Soviet official. He entered the room accompanied by a half dozen of his deputy ministers and brusquely demanded to know by what right we were in Moscow. We were told that we were working with all the wrong people on the Russian side and that this minister would establish his own superior coalition of experts to draft a competing petroleum law that would be far more politically acceptable to Russia. After all, he said, the UH Project was sponsored by opportunistic capitalists serving only their own self-interest, not Russia's. Then came the blunt announcement: the World Bank had promised the University of Houston millions of dollars to draft these laws. If we shared this money with this official's organization, he would cooperate with us rather than work against the Project.

At this time, we had not received any funds from the World Bank nor had many industry sponsors advanced funds. Indeed it was not clear if the Project would last past December. However, in Moscow the dread of winter was approaching, and the

job security, prestige, and power of many officials were openly threatened by the post-coup political scene. Our Project was caught in the desperate jockeying for power by the Soviet nomenklatura. We left the meeting, made our way to the Russian White House, explained the situation to the Russian officials and legislators who had already pledged their support to the Project, and then proceeded, somewhat behind schedule, to give our advice on the Underground Resources Code to the waiting committee of Russian experts. This initial group would stay the course with us for a full year, dropping or adding a few members from different disciplines and areas of expertise as required by the demands of the Project.

The Russian group of experts fell under the jurisdiction of the Minister of Fuel and Energy of the Russian Federation. As such, the group had a pronounced bent toward centralizing the power over oil and gas resources in the hands of the federal government. Yet the same centrifugal forces that separated the Soviet Union are present within the Russian Federation. About a hundred ethnic groups exist in Russia, varying greatly in culture and size. There are different levels of regional self-government in three types of autonomous subdivisions within the Russian Federation: autonomous republics, autonomous oblasts, and autonomous okrugs.²⁹ The sixteen autonomous republics (formerly called Autonomous Soviet Socialist Republics) of the Russian Federation, homelands of important ethnic groups, all proclaimed themselves sovereign and announced the priority of their legislation over that of the Russian Federation between 1989 and 1991. The five autonomous oblasts and ten autonomous okrugs are administrative subdivisions with a more limited degree of local autonomy populated by smaller ethnic groups, some of which are semi-nomadic. During recent years, some of the autonomous oblasts and okrugs followed the lead of the autonomous republics and declared themselves sovereign states. Local municipalities form a third level of governmental division in Russia.

To simplify this picture in the proposed legislation, we drafted provisions which referred to three levels of government — federal, regional, and local — and relied on the Russians to

29. LESLIE SYMONS, ET AL., *THE SOVIET UNION: A SYSTEMATIC GEOGRAPHY* 225-26 (1983).

translate these terms into the proper governmental units under their own laws.³⁰

Centrifugal forces were especially strong in regions of Russia that produced natural resources like oil and gas or diamonds. For decades, these regions had been burdened with industrial pollution, but the resource wealth had flowed to the central planning agencies in Moscow. The Russian petroleum industry was divided into Production Associations that were assigned the responsibility to develop fields in a particular region. The Production Associations often employed tens of thousands of people in company towns far removed from the Moscow center. The Directors of these Production Associations, called the "oil generals," had begun to exercise considerable power in an effort to direct more resources to their regions.³¹

The UH Project was inevitably drawn into the debates about the jurisdictional powers of these levels of government. From the standpoint of foreign investors, a strong centralized federal system of licensing oil and gas resources was decidedly attractive. The benefits of a "one window" or "one key" licensing system that avoided duplication and delay were obvious to the Russian drafters as well. However, these jurisdictional issues were matters for the Russian parliament to decide, not the petroleum legislation drafting committees. The UH Proposed Licensing Act does contain one provision declaring that petroleum resources are "of federal importance" and that rights to the resource "shall only be granted by the Competent Authority."³² This provision was the one attempt made to centralize

30. In 1991, the Russians had drafted a new constitution which was printed in the Russian newspapers for public comment. This draft constitution proposed converting this crazy quilt of governmental units into about 40 states of roughly equal size and economic power. Passage of a new constitution was considered a high political priority for 1992. However, in lieu of a new constitution, the Russian Federation enacted a Federal Treaty in early 1992 which delineated the respective powers of the federal, regional and local governments. This treaty is to be incorporated into a new constitution at a later date. It adopts a system of joint federal and regional jurisdiction over most natural resources, including petroleum. See Treaty on Demarcation of Jurisdictions and Powers between the Federal Organs of State Power of the Russian Federation and the Organs of Power of the Republics within the Russian Federation, art. II, Mar. 13, 1992, available in LEXIS, World Library, SovLeg File [hereinafter Demarcation Treaty].

31. See, e.g., Louis Uchitelle, *Russia's 'Oil Generals' Fight for Bigger Share of Profits*, HOUS. CHRON., Feb. 16, 1992, at F11.

32. See PROPOSED LICENSING ACT, art. 3(c). Under a draft Russian Constitu-

decisionmaking at the federal level, a result that the Russian Ministry of Fuel and Energy endorsed. However, from the very start of the Project, it was clear that if the Russians adopted a "one window" licensing system, many officials at all governmental levels and from many agencies would be standing behind that one window.³³

Thus, the UH Project members often gave examples to the Russians of how the United States government delegated authority to the states to implement and enforce federal laws, in order to illustrate how a dual regulatory system can exist successfully and avoid duplication. We also gave examples of how, within the federal government itself, Memoranda of Understanding were used to clarify the jurisdiction of certain agencies, including the delegation of one agency's power to another in a particular area in order to streamline the bureaucracy.³⁴ Then we left it to the Russian political process to decide the relative power of the center versus the regions and the local municipalities.³⁵

tion published in 1991, the federal authority would have exclusive jurisdiction over minerals of "federal importance."

33. Our Project was sufficiently well-known in Russia that one energetic and extremely able official from the Komi Republic visited the Law Center for several days to lobby us to draft the proposed laws with provisions giving power over the petroleum resource to the autonomous regions. A few weeks after this visit, *Petroleum Intelligence Weekly* reported that resistance of regional governments in Komi and Tatar would slow the process of drafting a new petroleum law. "The 320,000 barrel a day Komi region . . . does not object to the basic tenets of the petroleum law being drafted by the University of Houston, but rejects in principle the notion that it should be bound by Russian legislation." *Regional Backlash, Tax Issues Impede New Russian Oil Law*, PETROLEUM INTELLIGENCE WEEKLY, Mar. 30, 1992, at 1, 2.

34. See Commentary on the Proposed Conservation and Environmental Protection Act for the Russian Federation, 15 HOUS. J. INT'L L. 765 (1993) (companion volume) [hereinafter Commentary].

35. The battle between the center and the regions was quickly joined in the Underground Resources Code. For years, foreign investors had stressed the need for Russia (and earlier the Soviet Union) to define who owned the mineral resources. Here is the political resolution adopted in the Underground Resources Code, effective as of May 1992:

Control over the State fund of subsurface resources shall be exercised in the interests of the peoples living in the corresponding territories and of all the peoples of the Russian Federation by joint decisions of State government (administrative) bodies of the Russian Federation and the constituent republics of the Russian Federation, territories, provinces and autonomous areas.

For example, the Federative Treaty enacted by the Russian Parliament to resolve the respective authority of the different levels of government within the federation grants joint control over natural resources.³⁶ It appears that under the Russian Land Code and the Russian Fundamental Law of the Environment, the smallest units of self-government, *i.e.*, the local Councils of Peoples Deputies, have approval (and therefore veto) power over mineral development.³⁷ The delays and difficulties of working through the political maze of jurisdictions within Russia have reportedly retarded foreign investment there relative to other former republics of the Soviet Union, such as Kazakhstan where a strong central authority holds power.³⁸

An additional source of politics that touched the Project was the large number of other Western advisors from law firms, investment banks, and government agencies who offered their services to various Russian entities in the development of petroleum laws. The UH Project attempted to bring such advisors into the Project as reviewers of our draft laws, and we

LAW OF THE RUSSIAN FEDERATION CONCERNING SUBSURFACE RESOURCES, art. 2 (Ernst & Young, trans., May 5, 1992)(originally published in Russian Gazette). Article 42 of this code gives the percentage distribution of the payments received from licensees among the budgets of federal, regional, and local governments. *Id.* art. 42.

Here is how the organizational structure for issuing licenses was resolved:

The license shall be issued jointly by the representative government body of a constituent republic of the Russian Federation, territory, province or autonomous areas and by the State body for the administration of the fund of subsurface resources.

The State body and its territorial subdivisions shall . . . agree upon license conditions with State bodies for the administration of industry, land, water and forestry resources and the protection of the natural environment with State mining supervisory bodies and . . . with State bodies for the administration of the economy.

Id. art. 16. Decree No. 2396 of the Supreme Soviet of the Russian Federation of February 21, 1992, Concerning the Procedure for Implementing the Law of the Russian Federation "On Subsurface Resources," (Ernst & Young, trans.) charges the Committee of Geology of the Ministry of Ecology and Natural Resources with the functions of administering the state fund of subsurface resources. Thus, the Committee of Geology is the federal Licensing Authority that must coordinate the approvals of the regional authorities and other federal bodies.

36. Demarcation Treaty, *supra* note 30, art. II.

37. See Commentary, *supra* note 34.

38. Brian Killen, *Kazakhstan Ahead of Russia in Luring Foreign Oil Firms*, HOUS. CHRON., Feb. 22, 1991, at B1.

continued to urge Russian officials not to authorize a competing group of Western experts to draft a separate petroleum law. To do so would only cause more delay and problems within the already labyrinthian political maze in Moscow. Moreover, the Russians have few experts trained in legal drafting. If several competing but inevitably similar Western-style laws were drafted, the workload on the Russian legal experts would become even more burdensome as they compared and contrasted the different drafts.

Of course, the Russians had every right to show the UH draft laws to anyone for external review. The Russians clearly felt some pressure to secure a European perspective on the UH laws, which were sometimes criticized by Europeans as being written solely by Americans based on U.S. laws. The European Commission hired a London law firm, Denton Hall, to review the work of the UH Project and advise the Russian expert group of any problems. Members of this law firm spent two days at the UH Law Center reading through the draft Licensing Code. They then submitted comments to the Project which were added to those of the sponsors and the World Bank in subsequent draft revisions.³⁹

The UH Project could do little to stop competing drafts of petroleum laws from being developed by Russian entities nor was this our objective. Over the course of the year, a number of such laws were drafted by entities such as Gasprom and VNIIOENG, a research institute associated with the Russian Ministry of Fuel and Energy. The UH Project received copies of such laws and analyzed them both for insights into the Russian political process and for their substantive content. The UH Law Center, with the World Bank, sometimes held joint meetings

39. Denton Hall Burgin & Warrens, Press Information: City Lawyers for Russian Petroleum and Mining Laws (May 5, 1992) (on file with author). In May 1992, when Denton Hall publicly announced its contract with the European Commission, its press release stated: "This is the first time that the Russian government has been provided with foreign advice on these matters which is predominantly European. The World Bank and the European Bank for Reconstruction and Development have been providing assistance in this matter, but the input has been predominantly American." *Id.* In fact, one of the three Reporters in the UH Licensing group was Professor Richard Bentham of the University of Dundee, probably the foremost European authority on international energy transactions. The UH Proposed Licensing Act is not based on U.S. law at all, but on principles of international oil and gas systems used around the world.

with the drafters of the different Russian laws in an attempt to coordinate their efforts and reach a consensus Russian draft law. These meetings required that the UH Licensing Reporters become experts in several competing Russian laws, comparing, contrasting, and commenting on all of them as diplomatically as possible.

A final source of Russian politics was the classic clash of ideas between market reformers and conservatives, who resisted change. On May 30, 1992, President Yeltsin fired Lopukhin from his post as Minister of Fuel and Energy and replaced him with Viktor Chernomyrdin, a former Soviet gas industry minister.⁴⁰ Lopukhin had been closely tied to Yegor Gaidar's market reforms. It appeared that his ideas for reforming the oil and gas industry were opposed by many of the Directors of the existing Production Associations. The firing also followed a six-fold increase in the domestic price of crude oil and a threatened strike by oil workers in the western Siberian region of Tyumen, Russia's largest oil-producing area.⁴¹ Chernomyrdin, a former head of Gasprom and thus a fellow industrialist to the Production Association directors, seems less likely to move as quickly toward a market economy. Gasprom has developed its own "Law on Gas" which perpetuates much of the state monopoly in gas pipelines, and also asserts state control over gas exploration and production.⁴²

40. Paul Belyakov, *The Oil Tycoons Got Theirs—And Others Too: President Yeltsin Dismisses Fuel and Energy Minister*, RUSSIAN PRESS DIG., June 1, 1992, available in LEXIS, World Library, SPD File.

41. Adi Ignations, *Russia Announces Steep Price Rise on Domestic Fuel*, WALL ST. J., May 19, 1992, at A12. See also *Russia Attempting to Avert Strike by Oil Workers*, WALL ST. J., May 28, 1992, at A16. Even with the price increases, the domestic price of crude oil in Russia was about \$3 a barrel compared to about \$19 a barrel on the world market. A gallon of gasoline cost about 23 cents. Louis Uchitelle, *Russians Line Up for Gas as Refineries Sit on Cheap Oil*, N.Y. TIMES, July 12, 1992, at E4. The Tyumen fields earn more than 60% of Russia's hard currency and a strike would have had serious economic repercussions.

42. VNIIE/Gasprom Institute, Draft of the Natural Gas Act of the Russian Federation (translated document received in October 1992, and on file with author). The proposed Gasprom Act states that the gas supply systems and facilities of the existing gas industry shall be predominantly owned by the government and that the state shall enjoy a priority right to invest in newly created and existing gas supply networks and facilities. *Id.* art. 4. The act creates a Unified Gas Supply Network (UGSN) to be managed under a charter approved by the Russian Federation government. This UGSN consists of a

The firing of Lopukhin marked a definite slowdown in the pace of market reforms in Russia.⁴³ Since its admission to the International Monetary Fund (IMF) in early 1992, Russia had been working on a program to stabilize the ruble in order to qualify for IMF loans. However, starting in May 1992, the Russian government began printing rubles to give as subsidies and credits to state enterprises, including a billion-ruble credit to the oil industry. Many Western officials attribute the slowdown in reform to the intransigence of the Russian parliament rather than retrenchment by the Yeltsin government. In late May, the Russian parliament set aside two key elements of Yeltsin's reform program, a bankruptcy law and a privatization law.⁴⁴ Strong opposition to Yeltsin's privatization program comes from enterprise managers who want to privatize companies through non-competitive management buyouts at very low prices. Other managers prefer to continue the system of state subsidies to industry rather than risk the vagaries of the market. Some managers want to form alliances with ministries and "privatize" by combining enterprises into large consortia run by the ministries with interlocking cross-holdings between companies. Russian industry, particularly Gasprom, is lobbying to keep foreign investors from majority control of natural resources, such as the Barents Sea gas field.⁴⁵ The UH Proposed Licensing Act, while clearly recognizing existing claims of the current Production Associations, will not be embraced by Russian industrialists and legislators with these attitudes.

number of companies involved in exploration, production, processing, transportation, storage, and distribution of gas. The management of the UGSN coordinates the operation of all of these companies. *Id.* art. 35. Gas producers outside of the UGSN will not be connected to the transportation network unless the pipeline has excess capacity. Clearly, this vast, vertically integrated structure under one centralized command is not designed to encourage competition or to provide nondiscriminatory access to all producers.

43. Laurie Hays & Terence Roth, *Russia's Backsliding on Reforms Worries IMF, Economic Advisors*, WALL ST. J., June 2, 1992, at A11. See also Celestine Bohlen, *Economic Furor Is Growing Over Changes by Yeltsin*, N.Y. TIMES, June 3, 1992, at A11.

44. Andrie Shleifer, *The Enemies of Russian Privatization*, WALL ST. J., June 2, 1992, at A14.

45. Elizabeth Rubinfiel, *Russian Groups Urge Moscow to Keep Foreigners from Controlling Resources*, WALL ST. J., Oct. 23, 1992, at A10. Rosshelf, a group of 19 Russian companies, including Gasprom, a huge metallurgical conglomerate, several research institutes and defense factories, wants preferential access to the Barents Sea prospecting rights. *Id.*

IV. PREVIEW OF THE DRAFT LAWS

There were days when the political news from Moscow was so depressing, the memos from industry sponsors or outside consultants so shrill in their criticisms, and the administrative workload so unrelenting that, from my perspective, a lack of funds to continue the Project was devoutly wished for. However, offsetting these factors was the sheer intellectual challenge of drafting and reviewing proposed laws that might, in some small measure, contribute to the course of democratic market reform in Russia.

The other authors of this symposium issue are fellow Reporters who drafted the model legislation presented to the Russian Expert Group. From my added perspective as the UH funnel for this work, each Working Group had its own character and set of problems. This section of the Article briefly describes the work of each Working Group as a preview to the Reporters' articles and commentaries.

A. *Licensing*

The Licensing Group led the pack. Both the Russians and the industry sponsors showed the most interest in the licensing law. This group had the advantage of numerous international models of licensing laws, which aided the drafting process. An outline of the proposed law was quickly followed by a first draft, and then by lengthy meetings with Working Group members to hammer out problem areas. By the first week in January 1992, this draft law was basically finished and had been sent to the other Working Groups to assure consistency in all drafting efforts.

The major intellectual problems facing the drafters in the Licensing Group were constraints imposed by the Russian Underground Resources Code and Land Code, and the treatment of existing Production Associations. The Proposed Licensing Act seeks to override the existing Underground Resources Code, where the two laws are in conflict.⁴⁶ Whether the Rus-

46. See PROPOSED LICENSING ACT, art. 73. For example, the Underground Resources Code does not permit direct negotiations for a license, while the UH Proposed Licensing Act allows this method under certain conditions. LAW OF THE RUSSIAN FEDERATION CONCERNING SUBSURFACE RESOURCES, art. 13.

sian Parliament finds this approach acceptable is another matter. In most respects, the Proposed Petroleum Licensing Act does not conflict with existing law, but brings to the host country and the investor a much more detailed legal framework for oil and gas development than is provided in the umbrella Underground Resources Code. For example, the Proposed Petroleum Licensing Act requires minimum exploration expenditures and annual work programs and budgets and provides for relinquishment of license areas not held by commercial discoveries. Because Russian law seemed to have no ready mechanism for providing surface access rights to petroleum licensees, the UH law proposed the concept of an "administrative servitude."⁴⁷ Under the Russian Land Code, the local Councils of Peoples Deputies must authorize use of the surface. If such approval is not forthcoming, the UH Proposed Act allows a licensee either to relinquish the license area (with reimbursement of expenses) or to request the Licensing Authority to impose an administrative servitude on the surface (with compensation to the surface owners). The Western drafters did not expect that the Russian experts would retain such a creative provision, but the Article provided an excellent vehicle for discussion of the problems of surface access that the Russians themselves would have to address.

Another perplexing issue was how to bring the existing Russian petroleum industry into the new licensing regime. Some of the more ardent Russian reformers proposed an early death to the existing industry by requiring the existing Production Associations to meet the dictates of the new laws. They would be unable to do so and would quickly lose their rights to develop, freeing up the land for other investors. The Westerners felt that this approach too closely approximated expropriation of existing investments, a concept disfavored in the precepts of private enterprise. Also, several of the industry members were involved in ongoing negotiations with some of these Associations and did not want to lose their rights under existing agreements. Thus, the UH proposed law adopts a provision that allows the existing Russian enterprises to obtain licenses on those areas previously granted to them which contain petroleum in commercial quantities.⁴⁸ The provision also allows any party with an

47. See PROPOSED LICENSING ACT, art. 47.

48. PROPOSED LICENSING ACT, art. 21.

exclusive arrangement in existence to continue to negotiate a production license that complies with the new licensing law.

B. Conservation and Environment

No international models existed to aid the drafters of the Conservation and Environmental Protection Act. In advanced countries with a domestic oil and gas industry, such as the United States or Norway, a panoply of environmental laws governs all industry, and separate laws for the petroleum sector are not needed. In underdeveloped countries without a domestic industrial base, environmental laws often do not exist. The petroleum resource is developed by an international oil company under some type of licensing or concession agreement, and the primary provision for environmental protection is that the licensee shall use "internationally accepted standards" in developing the resource. Russia fits neither of these models. It possesses a large domestic oil industry and some strong environmental laws, but these laws were seldom enforced, resulting in serious environmental degradation from the existing petroleum operations.⁴⁹

Thus, a unique law was proposed for a unique situation. The Reporters took principles of world practice from a combination of U.S. federal offshore leasing acts; Norwegian laws; the Interstate Oil Compact Commission model act on petroleum conservation; international conventions on oil pollution liability and preparedness; United Nations and World Bank guidelines on exploration and production operations; European Community directives on environmental assessment; and industry guidelines on responsible environmental management by groups such as the International Association of Geophysical Contractors and the American Petroleum Institute. These principles were designed to mesh with the UH Proposed Licensing Act and with Russia's Fundamental Law of the Environment and Underground Resources Code.

Unlike the Licensing Working Group, this group was unable to develop a consensus draft. At least two industry sponsors considered the draft law too detailed and too prescriptive. At the same time, specialists from the European Bank for Recon-

49. See MURRAY FESHBACH & ALFRED FRIENDLY, JR., *ECOCIDE IN THE USSR: HEALTH AND NATURE UNDER SIEGE* (1992).

struction and Development considered the law to be too lax in some respects. Other industry sponsors with members in the Working Group accepted the draft, though with no great enthusiasm. Another industry sponsor, who had not been involved in the drafting sessions, liked the end product enough to ask if the proposed law could be given to the Vietnamese government as a model. Buffeted by this diversity of opinion, the Reporters revised the draft at least five times. At that point, it was time to discuss the draft law with the ultimate policy-makers, the Russians.

Perhaps ironically, this was the law that the Russian expert group seemed to like the best. When the Reporters discussed the law with the Russians in Moscow over a period of four days, several provisions were bracketed to show where controversy existed. After explaining each article, the Reporters presented the position of certain industry sponsors to the Russian experts and also explained why we ultimately disagreed with this position. We also prepared a detailed written commentary to the proposed law that explained where particular provisions could cause problems for private investors if not implemented reasonably.⁵⁰

C. Pipeline Transportation

The Pipeline Transportation Working Group ultimately drafted four different proposals: a treaty governing oil and gas pipeline transportation among the former members of the Soviet Union; a short set of basic principles for pipeline regulation; a model oil and gas pipeline law for the Russian Federation; and finally a model transportation law for oil pipelines only. The proposed treaty was prepared first and discussed with the Russian experts in March 1992.⁵¹ The treaty approach was considered too difficult to enact politically, so the shorter version of principles was prepared in order to give the Russian

50. See Commentary, *supra* note 34.

51. With the break-up of the Soviet Union, exports of oil and gas from Russia must often pass through independent nations, such as the Ukraine. A treaty would help to assure continuous flows to end users in Europe who have already experienced sudden drops in deliveries, reportedly due to the unstable political situation. Bhushan Bahree & Elizabeth Rubinien, *Disruptions in Flow of Natural Gas from Russia give Europe Jitters*, WALL ST. J., Oct. 27, 1992, at A13.

drafters a basic framework to consider in their own drafting efforts. The Pipeline Transportation Working Group then incorporated these principles into an oil and gas pipeline law, and discussed this with Russian experts in May 1992. Ultimately, gas pipelines were dropped from the proposed law in light of massive Gasprom resistance, and the final product of the Pipeline Transportation Working Group is a proposed law on oil pipelines.

Despite the incredible energy and expertise of this Western Working Group, it was clear that pipeline transportation was not a priority item with the Russian drafting group assigned to work with the UH Project. While the Russians have made some progress in reform of their oil pipeline system,⁵² too often it seemed that the UH Reporters were not working with the right Russian experts to be able to achieve real progress. One of the Reporters from this group, Patricia Eldridge Godley, continues to work with the World Bank on the development of these pipeline laws that are so important to prospective investors in Russia's oil and gas fields.

D. Tax and Fiscal

The Tax Working Group was the only one that did not draft a model law. Many factors contributed to this. First, the Working Group did not want to draft a separate tax code applicable only to the petroleum industry. At the start of the Project, the Russian Federation was in the midst of enacting major tax legislation governing all industry, and the Tax Group wanted to wait until the dimensions of this legislation were known. The Russian Federation subsequently enacted an income tax law, a value added tax, and an export tax on oil. In addition, the Underground Resources Code contains provisions for the enactment of many other fees and charges, including a "supertax" on excess profits.⁵³ Simply tracking and understanding the general tax laws issued by the Russian government were major undertakings for many months of the Project. Further, the World Bank had designated a European consulting firm to

52. See Patricia Fry Eldridge, *Russian Energy Legislation: Regulating State Monopolies to Allow the Development of Competitive Markets*, 13 ENERGY L.J. 1 (1992).

53. LAW OF THE RUSSIAN FEDERATION CONCERNING SUBSURFACE RESOURCES, arts. 39-47.

perform the economic modelling studies of various tax and fiscal strategies for the Russian petroleum industry, and this work had not been completed by July 30, 1992, at which time the UH Project was scheduled to end. Nonetheless, the Tax Reporters were quite active in providing advice to the Russians who often requested help with specific items. The Reporters met numerous times with Russian tax experts, either in Houston or Moscow, and drafted many lengthy memos, explaining the process of international risk assessment by banks and capital markets, the cumulative effect of Russia's tax system on the petroleum industry, the fundamental issues concerning tax legislation (such as the availability of a foreign tax credit), and advice on structuring any proposed supertax on the petroleum industry.

Of course, without a reasonable tax and fiscal system in place, no licensing system, however perfect, will attract private capital. This seems to be a lesson that the Russians will learn only with time, and with the international capital market as their best teacher.

V. CONCLUSION

The University of Houston Project officially ended on July 30, 1992. At that time, we had largely accomplished our purpose of presenting to the Russians "civilized" laws reflecting world practice in the petroleum industry. Under the Project's aegis, these model laws had been drafted and reviewed by many Western experts with diverse backgrounds and perspectives to give the Russians advice that balanced the legitimate interests of the host country and private investors. More importantly, the draft laws had been discussed and revised with many Russian experts whose commitment to learning Western principles of law and economics was steadfast and determined. We drafted cooperatively in a different language with a different alphabet; with men and women who had never experienced a market economy and who had little concept of administrative rulemaking or due process; with related and sometimes inconsistent laws being drafted and enacted every day; under deadlines that would have been thought impossible, had they not been imperative; and with pervasive political maneuvering and instability. The successful completion of the Project was due to the intellectual stamina of the Western and Russian experts on both sides of the globe.

The job could not have been accomplished without the dedication and perseverance of the Reporters and the time, talent, and funds contributed by the industry sponsors and the banks. The Project's proposed laws appear in a companion volume to this issue. The *Houston Journal of International Law* hopes to publish a future issue of the Journal containing the petroleum laws ultimately enacted by the Russian Federation. A comparison of the two sets of laws will be a good gauge of how ready the Russian legislature is to embrace private investment and a market economy.

Appendix A

PROTOCOL OF THE MEETING WITH THE PRIME MINISTER OF THE RSFSR, I.T. GAVRILOV, SEPTEMBER 2, 1991

The Government of the RSFSR supports the offer of the University of Houston to provide consultative assistance to Russian experts in the preparation of the RSFSR Draft Law on Underground Resources and also in the future on other legislation projects in the area of oil and gas industry, satisfying the social and economic interests of the Russian Federation. The legislation to be developed should promote the effective use and conservation of the mineral resources of Russia, the perfection of a system of taxation of income from their use, the stimulation of the creation of market conditions for their commercial use, the attraction of foreign investment for exploration and development of natural resources, the protection of the environment, and the entry of the Russian Federation into the world economic community.

The University of Houston has expressed its readiness to supply centralized consultation in the development of this legislation using the legal experience of the developed and developing countries in the indicated area. The work will be carried out under the auspices of the Law Center Foundation and the Law Center of the University.

The Government of the RSFSR will provide necessary assistance in matters of financing and the organization of the normal and effective work of the experts of the University of Houston on the territory of the RSFSR, including the maintenance of communications with appropriate executive and legislative bodies, visa support and other reasonable assistance.

The University of Houston, for its part, will provide for the financing of the work of the group of Western experts and also, as necessary, receive in the United States individual experts or groups of experts from the RSFSR and supply them with

necessary materials and provide other assistance necessary for the work of these experts on the territory of the USA.

For the Government
of the RSFSR

For the University
of Houston

11/9/91 [Sep. 11, 1992]

Igor Garilov
Vice Prime Minister

George Hardy III
Project Director

