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THE UNIVERSITY OF HOUSTON RUSSIAN PETROLEUM LEGISLATION PROJECT: A BRIEF PERSPECTIVE

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I. INTRODUCTION

This symposium on the University of Houston Russian Petroleum Legislation Project contains articles by the true experts who worked the hardest to give substance to the entire effort. Without their skill and dedication nothing would have been achieved. It is, therefore, they who deserve the credit. It is only by virtue of my service as titular Director of the Project, which gives, perhaps, a broad perspective of the total effort and knowledge of events and relations in Moscow, Houston, and points in between that I have any contribution to make or, indeed, any right to speak at all. It is, thus, with gratitude for the dedication of my colleagues and with full understanding of the magnitude of their contribution that I render this brief perspective.

II. GOALS AND OBJECTIVES

The intent of the Project was not to "draft petroleum laws" for Russia. To begin with, that would have been consummately presumptuous. Russia is a vast land, rich in its own traditions, peopled by proud, sensitive, and highly educated beings. To have begun and performed the Project's work with the attitude

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that western experts could assume some paternal, patronizing role and tell Russians what is best for them would have been the most certain way to assure total, abject failure. If any degree of success was to be obtained, there was an urgent requirement of respect and sensitivity. Thus, those guiding the work approached the task in common agreement that the role of the Project was to advise, recommend, and, in the process, to teach without preaching. What success was achieved is, therefore, in my view, attributable to this commonly agreed philosophy of approach.

Representatives of the Project were originally scheduled to arrive in Moscow on the date of the August 1991 coup. That itinerary was of course quickly scrapped. When the coup ended a few days later, however, the initial visit was re-scheduled, and Paul Gregory and I arrived in Moscow on August 26, 1991. We were joined shortly thereafter by Dean Knauss. The atmosphere was heady, euphoric, proud. These strong feelings seem still to carry Russia through hard times.

There ensued a period of a week to ten days of intense discussions and questioning of all of us about everything from oil and gas law, to anti-trust matters, to the rights of ethnic groups, to the fundamental economics of a free market. In addition to Russian economists and legal experts, questioners included Yuri Shafranik, then the equivalent of governor of Tyumen (the principal oil producing region), Vladimir Lopukhin, then Deputy Minister of Finance and later Minister of Fuel and Energy, and Vasily Fedortchenko, then Chairman of the Committee on Industry and Energy of the Supreme Soviet and subsequently a member of the Supreme Economic Council of the Supreme Soviet, all of whom became friends and patrons of the Project.

A protocol dated September 11, 1991 was ultimately executed between the University of Houston and the government of the Russian Federation. The protocol recognized the Project as the focal point for the input of western expertise in the process of drafting petroleum legislation and expressed the intent that all western drafting and advice should be filtered through the Project. All things considered, there was a good beginning. An appropriate measure of mutual confidence was established; the protocol was signed; and work was to begin.

III. THE LAW ON UNDERGROUND RESOURCES

One of the direct impacts of the Project was the unforeseen, unplanned participation in the drafting of the Law on Underground Resources, enacted by the Supreme Soviet on February 21, 1992 and promulgated by President Yeltsin in May 1992. We were asked whether we had reviewed and evaluated the draft of this law, which was intended to serve as what the Russians styled an "umbrella law," an encompassing, general law which could serve as the foundation for subsequent, specialized mineral laws, including petroleum legislation. The only truthful response was that we had, indeed, reviewed and evaluated that draft, that it was a perpetuation of the purportedly rejected command economy, and that it was, accordingly, inimical to the development of a market-oriented economy. That truthful response was met by a request to furnish an alternative draft that we thought might be adequate. The Russians were then working under a deadline that would have required submission of a draft to the Supreme Soviet by October 1, 1991. Thus, this request created a challenge that was difficult to meet.

Nevertheless, drafting began on approximately September 15, 1991, and a draft was delivered on September 20, 1991. Assistance in drafting continued rather intensively through October and November. A delegation of Russian experts visited the University of Houston in late October and early November, and, in addition to laying the groundwork for intensive work on petroleum legislation, the Law on Underground Resources was discussed.

There are widely acknowledged imperfections in the Law on Underground Resources as finally enacted; but, despite these, the law represents a significant, progressive step, and it contains the basic elements of a sound energy policy. The University of Houston Project had some direct impacts on this legislation as well as on the implementing statute or regulation drafted by the State Committee on Geology (now Roscomnedra) and approved by the Supreme Soviet.

IV. PETROLEUM LEGISLATION

Although background work had begun previously, the first formal working meetings with Russian experts regarding petroleum legislation took place in Houston in late October and early

November, 1991. Presentations were made by the advisory groups working on licensing, taxation, conservation and environmental impacts, and transportation. Thereafter, drafting and research were pursued vigorously. Each of the four groups met with Russian experts variously through mid-1992. Representatives of the Project continued meetings in Moscow for various purposes through early August, 1992.

Those responsible for the direction of the University of Houston Russian Legislation Project determined in July, 1992 that the Project had been brought to a suitable state of completion, subject to the utilization of various members of the Project team in support of legislative activities in Russia. Although some work continued in order to reach the desired level of completion, the Project came to formal completion on July 31, 1992. Subsequent work was carried on in the area of licensing, and I was asked by members of the Supreme Soviet and the Ministry of Fuel and Energy to continue informal work on petroleum legislation.

A forum was held in Houston at the Law Center on November 11, 1992 with a Russian delegation participating to explain the draft developed by the Russian expert group led by Mansur Gazeev.

V. CURRENT LEGISLATIVE DEVELOPMENTS

Several drafts of proposed petroleum legislation currently exist. One of these was drafted by the VNIIOENG Institute, one produced by an expert group in 1992 under the sponsorship of the Ministry of Fuel and Energy based on the University of Houston Project's work and a third produced by an Interdepartmental Commission with the sponsorship and participation of the Ministry of Fuel and Energy in 1993. The purpose of the third draft was purportedly to harmonize the various drafts that had been produced.

The VNIIOENG Institute draft, in my perception, is regressive. It would preserve the system of the command economy, set up a nationalized oil industry with a national oil company that could both grant licenses and be an industrial competitor, and establish a bewilderingly complex bureaucracy. All of this is not consistent with the avowed goal of establishing a market economy.

The 1992 draft by the expert group under the sponsorship of the Ministry of Fuel and Energy had considerable western

input both from the University of Houston Project and from the group of lawyers sponsored by the European Commission. Discounting the possibility of bias, the 1992 draft by the group sponsored by the Ministry of Fuel and Energy would come closest to establishing a system of a kind that would be comfortable to foreign investors and would nurture the growth of a healthy domestic sector.

The draft proposed by the Interdepartmental Commission of 1993 lies somewhere between the VNIIOENG draft and the 1992 Ministry of Fuel and Energy draft. One Russian expert has criticized this draft as perpetuating and amplifying the flaws of the existing legislation.¹ For example, one criticism was that after capital recovery, resources produced by a licensee would be owned by the State. Specific criticisms that I would add include the provision forbidding the use of a license as collateral for any liability. This may prove to be a deterrent because if one cannot give a lender of development capital a security interest in a license, it may mean that only those who have the internal resources to finance their Projects can compete fully in developing and producing petroleum. Clearly, this would be self-defeating. Additionally, the proposed provisions on transportation are not progressive. I would therefore join in the general criticism that the proposed Interdepartmental Commission draft both perpetuates and amplifies flaws of the Law on Underground Resources. Additionally, it adds previously non-existent bad features. Hopefully, this draft will, if presented and considered favorably on first reading by the Supreme Soviet, be subject to review and amendment which will improve it. From all reports, this draft seems to have the broadest base of support of any of the drafts discussed, but at this time it is not possible to predict the outcome in Russia about anything except that, in some form, Russia will survive.

In addition to the drafts of petroleum legislation, there is a proposed law on concessions. As originally drafted, this law would have treated concessions for a large number of varying types of enterprises, including use of land, industrial enterprises generally, use of air space, and use of natural resources. This would only complicate an already difficult situation. Among

1. Mansur H. Gazeev, Presentation at the Adam Smith Institute Seminar on "Marketization of the Former Soviet Union" (March 24-25, 1993) (Vienna, Austria).

other things, it would inject yet another agency into the licensing of petroleum Projects. I have been informed that there may be an attempt to amend this proposed law and turn it into one dealing exclusively with production sharing agreements for petroleum development which would be permitted to be entered into by direct negotiation. This potential law portends added difficulty and confusion.

VI. ACHIEVEMENTS OF THE PROJECT

Given these legislative developments, many will be prompted to question the effectiveness of the Project. To these potential critics I would say with neither hesitation nor reservation that the University of Houston Project has made substantial contributions to an emerging nation and has achieved widespread good repute for its efforts. What, then, are these contributions and achievements?

Those who have worked closely and intensively with the Project at the University of Houston believe that there are several significant accomplishments of which the University of Houston and those who have given it their active support, both in the form of funding and able work, can be proud. These include at least the following elements.

First, and perhaps somewhat difficult to assess and evaluate, is the contribution that the University of Houston Project has made to the general task of educating responsible persons within the government and the Supreme Soviet of the Russian Federation concerning a wide range of western legal institutions and concepts, running well beyond the immediate elements of a workable system of petroleum legislation. Those who have spent considerable time and effort in Moscow see evidence of the residual effects of this educational process in many different ways and places.

Second, despite the well-known imperfections of the Underground Resources Law, the University of Houston Project had a definite impact on the content of that law, and it is believed that this impact was in an overall sense beneficial. The Russians were intent upon such an enactment and found it not a matter of mere desirability but one of very substantial political necessity. The participation of the University of Houston Project in the enactment of this legislation is at least a partial measure of the Project's effectiveness. Moreover, it was the participation in the production of that legislation which was significantly

responsible for obtaining the trust and confidence of the Russian expert group in the work of the Project. Thus, this participation paved the way for the work of the Project directed specifically toward petroleum legislation.

Third, the efforts of those participating in the Project had a definite influence on the form and content of the regulation approved by the Supreme Soviet at the instance of the State Committee on Geology. These impacts continued up to the very final days preceding approval by the Supreme Soviet. While the licensing system so established is, like the Underground Resources Law itself, less than ideal, the impact of the suggestions by those associated with the University of Houston Project was substantial and succeeded in transforming an unsuitable original draft into one that may actually have the potential for working effectively.

Fourth, whatever draft of petroleum legislation may emerge from the legislative mill, there is no doubt that the University of Houston Project will have influenced it. Even a poor law will be better in concept and articulation because of the hard work of all of those connected with the Project.

Fifth, the name of the University of Houston is greatly enhanced because of this work. It is known from Moscow, to Tyumen, to the Ukraine and to Vienna, to London, to Paris to all points of importance in the United States, and to Australia and Singapore in the Pacific Rim.

Surely one cannot count these efforts as failure. They will be spoken of, I believe, with respect for years to come. The symposium that follows will prove well the quality of the work done by those who labored greatly to make this undertaking successful.

