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UNIVERSITY OF HOUSTON RUSSIAN PETROLEUM LEGISLATION PROJECT

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I. INTRODUCTORY COMMENTS

Included in this issue is a copy of the Proposed Petroleum Code of the Russian Federation, the final product of the Russian Petroleum Legislation Project. As described in some detail, this project, which began over eighteen months ago, had as its goal to assist Russian experts in their efforts in drafting comprehensive Petroleum Legislation. Our job has been to help coordinate advice on world practice from various Western experts. The ultimate objective is to help create a more stable legal and economic environment which can benefit the Russian people and at the same time assist in attracting Western investment. The University of Houston Law Center is grateful to the numerous financial sponsors, and the large number of academic, governmental, and industry experts who have contributed their time for the project.

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II. HISTORY OF THE PROJECT

A. *Origins*

The Russian Petroleum Legislation Project at the University of Houston Law Center was initiated in July of 1991 at the invitation of the USSR Minister of Oil and Gas to form an independent group of Western specialists to assist Soviet and Russian Republic experts in preparing petroleum legislation suitable for a market-oriented economy. The USSR Ministry, at the time, was charged with the task of creating a stable set of petroleum laws that would apply to the Union and its constituent Republics. In July of 1991, relations between the Union and Republics were strained, and it was clear that any Western specialist group would face a daunting task — that of walking a tightrope between Union and Republican interests.

The invitation was directed to Paul Gregory, Professor of Economics and Finance, University of Houston. I accepted the invitation of behalf of the University of Houston Law Center and recruited George W. Hardy, III to serve as chairman of the Western advisory panel.

We discussed the USSR Minister of Oil and Gas invitation with the Minister of Justice of the Russian Republic, who was attending the Texas State Bar Association meetings in July of 1992. The Russian Justice Minister expressed interest in using the expertise of the Western expert group and suggested ways in which the Western expert group could assist the Russian Republic which was preparing a draft mineral code of its own.

USSR and Russian authorities directed the project to the University of Houston for a number of reasons. First, Houston, as the oil capital of the world, was regarded as a suitable site for such a project. Second, the University of Houston already had a long and successful history of academic cooperation with the Soviet Union and its constituent Republics. Third, USSR and Russian authorities wished a neutral organization to organize the expert group.

We agreed that the Western advisory group would be comprised of international specialists in the field of petroleum legislation. This expert group would base its recommendations on the world practice of petroleum legislation. The University would play the major coordinating role but would call upon a

wide range of experts to assist its activities. We solicited contributions from energy and energy-related companies and other interested sponsors to provide the initial funding of the project. The panel's independence was assured by its university base and by diversity of corporate sponsors.

The stated goal of the project was to assist the Soviet Union and the Republics in putting in place petroleum legislation. The timetable of work was to be dictated by the legislative timetables of the USSR and the Republics. The passage of legislation was to benefit the Soviet Union, the Republics, and Western investors by establishing a stable, legal environment. The advisory panel was to study world practice in each major area, to make concrete recommendations in the form of draft model laws, and to elaborate the various options defined by international practices. The panel's recommendations, however, were limited to current world practice. Drafters would have an opportunity to create a legislative framework that avoided the West's past mistakes. In effect, here was an opportunity to create legislation superior to world practice.

The months of July and August of 1991 were spent organizing the core team of experts and in raising seed money for the project. The core group of experts consisted of George Hardy, III, Project Director; Paul Gregory, Project Coordinator; Jacqueline Weaver, Executive Director; and Gary Conine, Associate Director of Research and Licensing Coordinator. I was to exercise oversight functions. Initial funding was obtained from the Houston Endowment and from three energy concerns, and the University of Houston Law Foundation was appointed as the financial overseer of the project.

An exploratory team, comprised of Hardy, Gregory, and myself scheduled meetings in Moscow for mid-August of 1991. The August coup delayed the first set of meetings, and the University of Houston team traveled to Moscow one week after the suppression of the coup. The coup resolved the most difficult political question concerning the project — the balancing of Union and Republican interests. By late August 1991, the Soviet Union had all but vanished, and it became clear that the project's "client" was the Russian Republic.

Although intended as exploratory, our meetings with the Russian expert group, drawn from the various ministries, institutes, and academic organizations with expertise in energy and law, immediately turned to matters of substance — namely

to a review of circulating drafts of the Russian Law on Underground Resources. Our initial reaction to the circulating draft was that it largely dealt with organization and administrative procedures and would not contribute to the stated goal of moving toward a market economy in energy and minerals. Meetings with parliamentary officials and with the Deputy Prime Minister for Energy produced agreements and protocols giving the University of Houston expert group official advisory status with respect to the development of the underground resource code and subsequent petroleum legislation.

B. Charge of the Russian Government

The Russian government's intent with respect to our advisory group was reflected in the following principles of cooperation:

1. The Russians Are Writing Their Own Laws

We were not invited to write the Russian Republic's petroleum legislation codes. To think that the leadership of the Russian Republic would turn over responsibility for such an undertaking to a Western group would display a fundamental lack of understanding of the Russian political and economic scene. We were to provide the Russian legislative leadership with an understanding of world practice — how the various "civilized" oil-producing countries have crafted their laws. Our task was to provide Russian decision makers with the options that reflect "world practice" from which they would choose legislation suited to their circumstances. Russian experts would write Russia's own petroleum legislation. The proposed codes will be enacted by the Russian parliament after intense scrutiny and debate. Russian petroleum codes will be written in the interests of the Russian Republic on the basis of its own interpretation of acceptable world practice.

2. Laws Should Attract Foreign Investment

In its charge to our group, the Russian leadership stated its desire to have petroleum legislation codes that provide the stability, fiscal and tax framework, and contract guarantees required to attract foreign investment. If the enacted codes fail to provide such a result, the Russian government would regard its work as a failure. The Russian government states its desire to obtain feedback from potential Western investors. It was

clear from the outset that Russian authorities desired feedback from potential investors and considered the neutral University of Houston as an appropriate vehicle for arranging this feedback.

3. Nonexclusivity

Although our group would be a (the) major advisor, the Russian side reserved the right to consult with other Western groups. This decision was motivated by the desire not to be dependent upon the advice of only one group of experts and by the desire to be in a position to receive advice from other legitimate sources.

C. *University Requirements*

Before making the decision to embark full-speed-ahead on this project, we at the Law Center had to be sure that a number of essential conditions were met.

1. The Project Served a Legitimate Research and Community Outreach Function

Universities are in the business of advancing knowledge and disseminating this knowledge to the community. If the proposed project did not fill these requirements, it would not be worth undertaking. We determined, after consultation with associated faculty and with the community, that the opportunity to participate and assist in the major experiment of the 20th century — the dismantling of the Communist administrative-command regime — was an opportunity that should not be passed.

2. The Project Should Be Independent

Major research universities such as the University of Houston must follow established procedures to shield their research from conflicts of interest and from donor influence. To permit government or industry sponsors to affect the outcome of scientific research violates both University procedures and established codes of ethics of the academic community. We determined that each project group should be headed by a nationally-recognized scholar drawn from academe, government, or even business. Project oversight was performed by myself

and financial oversight by the Chairman of the Law Foundation. Each individual in this chain of command would be bound by written and implicit rules preventing conflicts of interest and sponsor influence.

3. Non-Intervention in Domestic Russian Politics

Our group was to be formed to provide neutral advice to any Russian expert group desirous of seeking such advice. We were to avoid choosing sides in internal disputes or serving as an advocate of specific internal political causes.

D. Satisfaction of University Principles

Academic institutions that work as advisors to Russian governmental bodies have learned that it is not possible to organize projects in a planned and orderly fashion. Much of what is done in this area is in the form of crisis management and emergency assistance.

The University of Houston Law Center began its cooperation with Russian Republic authorities exactly one week after the abortive August coup. We began to fill a vacuum created by the lack of information on Western legal practice both in terms of underground resources in general and petroleum resources in particular. Russian authorities were in an unenviable position: A stable legal framework had to be established with dispatch so that the vast Russian mineral resources could be developed; yet established laws reflected the discredited administrative-command economy. How were they quickly to put in place new laws that would create a market framework and be sensitive to the enormous transition dislocations that would occur in this process?

The University reacted to this emergency by beginning its consultation immediately. There was no time to go through interminable application procedures for government grants, which at that time were only under discussion. The limited seed money already committed had to suffice to begin serious work.

The Law Center determined that the major and independent oil companies that have sponsored the project had one overriding goal — to create in Russia and the other republics of the former Soviet Union a set of laws covering oil and mineral resources consistent with a market economy that set forth a stable legal and fiscal framework. Stable “rules of the game”

upon which long-run investment decisions can be made are far superior to specific rules and agreements that might favor one company over another. Western investors were increasingly frustrated by years of negotiations with the "rules of the game" changing daily. In this regard, the fundamental interests of the Western investment community and Russia coincided. This assessment permitted the University project to move forward confident that it could provide neutral expert advice free from manipulation or influence by industry donors.

The Law Center was therefore convinced that the two overriding principles that were required for us to proceed with the project — scholarly legitimacy and scholarly independence — were met. On this basis, the Law Center began a fundraising program that included major and independent energy companies, foundations, and subsequently the growing number of international organizations charged with providing technical assistance for Russia's transformation to a market economy. The project succeeded in attracting sufficient funding to carry out its work including funding from the World Bank and from the European Bank for Reconstruction and Development.

The project ultimately was able to move forward and successfully complete its mission. In helping to create a stable legal and economic environment, it represents a positive form of technology transfer. The Proposed Petroleum Code of the Russian Federation consisting of three parts — Licensing, Conservation and Environmental Protection, and Oil Pipeline Transportation — as currently drafted is included herein.

