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The Environmental Movement and Ecological Law in the Soviet Union: The Process of Transformation

Tatiana Zaharchenko*

INTRODUCTION

The revolutionary changes now occurring in the Soviet Union are affecting all aspects of Soviet public life. These changes have profound implications for the newborn Soviet environmental movement. During the last three to four years, environmental interest groups in the Soviet Union have successfully generated enough political pressure to achieve limited but nonetheless substantial environmental protection measures. The legal and political changes now occurring within the Soviet system may someday permit individual citizens to use legal mechanisms to protect the environment. For those unfamiliar with Soviet society, it must be stressed that these changes are inseparable from the legal reform included in the policy of perestroika.1


During its 1989 and 1990 sessions, the U.S.S.R. Congress of People’s Deputies enacted many historic decisions furthering the policy of perestroika. For example, the special monopolistic status of the Communist Party, which had been secured by article 6 of the Soviet Constitution, has been abolished. Article 6 has been revised to read, “The Communist Party of the

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* Assistant Professor of Ecological Law, Kharkov Law Institute, Kharkov, U.S.S.R. Professor Zaharchenko graduated from the Kharkov Law Institute in 1980 and received her Candidate of Legal Science degree in 1988. For six months in 1989-90, she worked in the San Francisco law offices of Heller, Ehrman, White & McAuliffe and Graham & James, and attended environmental law classes at Boalt Hall School of Law as part of an internship program sponsored by the American Bar Association and the Soros Foundation. The author is indebted to the Environmental Law Research Institute and Heller, Ehrman, White & McAuliffe for their support of her research. The author would like to thank Gretta Goldenman for her invaluable help in writing this Article, Joan Lane and Christina Gerber for their patient assistance with numerous drafts, and Alexey Korotsev for his constant support and encouragement. The author would also like to thank Professor John Dwyer of Boalt Hall.

Much of this Essay is based on Professor Zaharchenko’s personal knowledge of the ecological and legal situation in the Soviet Union. In addition, many of the legal developments it describes occurred during Professor Zaharchenko’s stay in the United States; documentation in English is not yet available. When obtainable, and with Professor Zaharchenko’s assistance, Russian language sources have been reviewed for accuracy by Nina Phillips and Matthew Weil, editors of Ecology Law Quarterly who speak and read Russian.
Within the legal sphere, the policy of *perestroika* aims to transform the Soviet Union into a "rule of law" state: a state in which laws enacted by legislative authorities have a power that cannot be overridden by other political, executive, and administrative bodies and that can be enforced more effectively through courts. This process is transforming the legal framework and administrative structures now in place for environmental protection, and it is beginning to alter the relationship between natural resources and their users.

This Essay surveys some of the changes and challenges in Soviet laws concerning the environment (referred to as *ekologicheskoye pravo* or ecological law). First, it reviews the Soviet Union's grave environmental problems and the new prominence of environmental issues on the Soviet political agenda. It describes how the opening of public debate in the Soviet Union has contributed to increased public awareness about environmental problems. Public awareness, in turn, has fostered the rise of a grassroots environmental movement that uses political pressure, rather than judicial action, to achieve significant gains in environmental protection. Second, this Essay provides an overview of the history and existing structure of Soviet legislation concerning environmental protection. It looks at recent developments in Soviet laws and administrative structures concerning the environment that could lead to a stronger judicial role in environmental protection. Finally, this Essay suggests other changes to Soviet ecological laws that could provide more effective legal protection for the country's environment.

I

ENVIRONMENTAL PROBLEMS IN THE SOVIET UNION

For much of the history of the Soviet Union, the environment was viewed as something to be conquered and manipulated. Huge public works, such as dams and canals, were undertaken with little regard for their ecological consequences. In the U.S.S.R.'s rush to become an in-

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Today, the Soviet Union's extensive environmental problems have been widely documented. Soviet industries emit 60 million tons of pollutants into the air each year, much more than industries in the United States, which has an economy twice the size of the U.S.S.R.'s.\(^4\) Pollutants in the atmosphere over the Soviet Union's 103 largest cities, including Kemerov, Zaparozje, Zdanov, Novokuznetzk, Yerevan, and others, are as much as 10 times higher than the maximum permissible concentration ("PDK").\(^5\) Only 11 of the Soviet Union's 1,800 chemical plants have met emission control targets.\(^6\) Many rivers also are dangerously polluted. For example, the microbe content of the Syr-Darya River is 104 times higher than normal, while the river's DDT content is 50 times higher than the norm.\(^7\) During the seasons when chemicals are used extensively on rice and cotton fields, concentration levels of pesticides in many rivers exceed the PDK by a factor of 100.\(^8\) The Baltic and Caspian Seas are also contaminated.\(^9\)

As a result of agricultural mismanagement, nearly 2.5 million acres of productive soils are being lost for agricultural use each year.\(^10\) The

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The term "PDK" (predelno dopustimye kontsentrationi, or maximum permissible concentration) is a standard established for each type of pollutant that defines a maximum concentration level of pollutants in the ambient air which is medically permissible. See C. Ziegler, supra note 3, at 104. The term is used in the U.S.S.R. in conjunction with the term "PDV", which is a standard defining maximum permissible levels of pollutant emission for each type of emission source. PDK's and PDV's are established by different ministries and agencies and are put into effect by the State Committee on Hydrometeorology and Environmental Monitoring (Hydromet) and the Ministry of Public Health of the U.S.S.R.


9. November 27 Decree, supra note 5.

humus content of soil has become very low. Some of the agricultural areas previously considered to be the most productive, with humus levels of 14-16%, have totally disappeared, and land containing 10-13% humus levels has decreased in area by a factor of 5.11 Careless agricultural practices, including huge overdoses of chemical fertilizers, pesticides, and defoliants, have also caused extensive problems, including the reputed poisoning of tens of thousands of people.12

Mismanagement has also led to habitat and therefore species destruction. The Aral Sea is probably the most shocking example of this type of mismanagement. Once the world's fourth largest inland body of water, the Aral has now dropped to sixth place.13 Since 1960, its volume has dropped 66%; its surface area has decreased 40%; and its level has fallen nearly 40 feet.14 The region around the Aral Delta, which formerly provided a habitat for 178 different species of animals, now supports only 38 species.15 In the area of Lake Baikal, a large number of species known nowhere else in the world have disappeared.16 Four hundred sixty-two species of fauna and 691 species of flora have been identified as being threatened with extinction.17

In fact, it is hard to find an area in the Soviet Union without serious environmental problems. According to A.V. Yablokov, the Republics of Central Asia, the Republic of Moldavia, some regions of the Ukraine, and the industrial regions of the European Soviet Union and Siberia have become ecological disaster areas.18 In the June 1989 session of the U.S.S.R. Congress of People's Deputies, Yablokov stated that 20% of the Soviet Union's population lives in ecological disaster zones, and another 35-40% live under ecologically unfavorable conditions.19

For many years these environmental problems received little official attention. Although some scientists and writers spoke out about the Soviet Union's environmental situation, the Soviet environmental move-

11. Yablokov, supra note 5, at 239.
14. Id.
15. Id. at 1173.
16. Yablokov, supra note 5, at 239.
18. Yablokov, supra note 5, at 240. A.V. Yablokov, a biologist, is one of the leading spokespersons for the Soviet environmental community. He is also a People's Deputy of the Congress of the U.S.S.R.
19. See XLI CURRENT DIGEST OF THE SOVIET PRESS, No. 31, at 20 (1989); see also Russia's Greens, supra note 3, at 24. In a U.S. radio interview in early 1990, Yablokov stated that "Every year the situation becomes worse. . . . If the ecological situation continues to worsen, we are not going to need goods or housing. The population will get smaller and people will die." Monitor Radio Early Edition (American Public Radio, Apr. 20, 1990) [hereinafter Yablokov Interview].
ment was not widespread. Soviet laws declared that the environment should be protected, but these laws were not often enforced, their vigorous requirements being "ignored in practice."\textsuperscript{20}

Now, however, environmental issues are high on the Soviet political agenda. For example, on November 27, 1989, the U.S.S.R. Supreme Soviet approved a special decree entitled "About the Urgent Measures for the Country's Ecological Recovery."\textsuperscript{21} The decree acknowledged the critical state of the environment in the Soviet Union and outlined a number of administrative and legal measures to be taken for restoring the Soviet environment. This response from the highest level of government reflects some of the changes taking place as a result of the new political situation in the Soviet Union. Just as interesting and promising from an environmental point of view is the emergence of widespread grassroots ecological activism. In many ways these legal developments and the growth of the environmental movement are part of the same phenomenon of change occurring elsewhere in the Soviet system.

\section*{II}
\textbf{THE SOVIET ENVIRONMENTAL MOVEMENT: POLITICAL TRANSFORMATION}

Until very recently, few Soviet citizens actively participated in the shaping of governmental responses to pressing public issues. But with the opening of public debate in the Soviet Union, many Soviet citizens have become involved in efforts to enhance their quality of life and to bring about changes in the area of environmental protection. Citizens are now expressing concern over local, regional, and Union-wide problems.\textsuperscript{22}

To be sure, a number of traditional environmental organizations have been in existence for many years, including the All-Russian Society on Nature Protection, with 70 million members, the societies of fishermen and hunters, and the societies for the protection of historic and cultural monuments.\textsuperscript{23} These groups are considered "formal" organizations because the Soviet government officially supported their formation. They

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{20} C. Ziegler, \textit{supra} note 3, at 81.
  \item \textsuperscript{21} November 27 Decree, \textit{supra} note 5.
  \item \textsuperscript{22} It is important to keep in mind that while the term "national" means "federal" or "countrywide" in the United States, in the U.S.S.R. this term defines something pertaining to any one of the Soviet national republics. To avoid confusion, this Essay uses "Unionwide" or "all-Union" to refer to something pertaining to the entire U.S.S.R., while "republicwide" or "republic-based" is used to refer to something concerning the individual Soviet national republics.
\end{itemize}
\end{footnotesize}
have typical Soviet hierarchical administrative structures with many staff positions and a multitude of voluntary, often purely nominal members. The level of activity of these traditional organizations has been quite low, but they have played an important role as, until recently, the only proponents of the environmental cause.

The situation began to change in 1986 when the Chernobyl disaster forced the Soviet Union to rethink not only its nuclear power policy, but also environmental risks in general. Chernobyl marks the birth of the new Soviet environmental movement. Across the country, citizens began to band together to protest nuclear power reactors, chemical plants, ocean pollution, and many other kinds of environmental deterioration.

One characteristic of the modern Soviet environmental movement is the formation of groups around specific ecological issues such as industrial pollution or nuclear power plants. Almost every local environmental problem now has its own citizens group trying to work out a solution. For example, an environmental group called Delta is concerned about the degradation of the Neva River in Leningrad. The Save the Volga Committee, formed in July 1989, is now fighting to clean up that river and to restore its fisheries.

In addition to these single-issue groups, there are several associations concerned about the Soviet Union's environmental problems at the all-Union level. Ecology and Peace, an association established under the auspices of the Soviet Peace Committee, is the best known and has been formally acknowledged by Soviet authorities. "Informal" organizations include the Social-Ecological Union (SEU), the Ecological Union (which broke away from SEU in 1988), and the All-Union Movement of Greens. These groups share the common goal of working to protect and restore the environment and to establish new forms of legal, administrative, and other mechanisms for solving ecological problems. Another group, the Ecological Foundation, is working to set up a fund that will collect payments from polluters and use the proceeds to clean up toxic...
wastes and to encourage the use of solar power and windmills. The All-Union Society for the Protection of Animals aims to take care of pets and wild animals in captivity.

Association Chernobyl is a special case. From one point of view it is a single-issue group. But the scale of the Chernobyl disaster raises this group to all-Union significance. Association Chernobyl's charter, registered with the Council of Ministers of the Ukrainian Soviet Socialist Republic, proposes to defend the rights of all citizens injured during the Chernobyl tragedy. The association focuses on making the Soviet atomic energy establishment more accountable to the public.

Two Republics, Lithuania and Estonia, have recognized an informal ecological or "green" group as a legal political party with the same standing as the other two new political parties, the Social Democrats and the Christian Democrats. The drive to create a political party focused on ecological issues reflects the fact that discussions regarding ecological conflicts in the Soviet Union have recently become very obviously political in nature. It is not by accident that almost all candidates who ran for the last republic-wide and municipal elections in the U.S.S.R. included ecological concerns in their political agendas.

Environmental concerns are often closely connected with nationalist movements in the different Union Republics. For example, environmental problems are the central issue for the largest informal republic-based organizations called the Popular Fronts. Strong nationalist and "extremist" biases are also present in republic-based ecological organizations, such as the Ukrainian association Green World (Zelyony Svyet), often officially accused of pursuing national independence for the Ukraine. In addition, the Ecological Society of the Soviet Union is said to be linked with an extreme Russian nationalist group, Pamyat.

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30. Id.
31. Ivanov, Im Nuzhna Nasha Pomosch [They Need Our Help], Izvestia, No. 101, Apr. 11, 1989, at 3, col. 7 (all-Union ed.).
34. For example, the leading Soviet newspaper Izvestia introduced a new heading, "Ecology and Policy," in its August 7, 1989 issue. See, e.g., Izvestia, No. 219, Aug. 7, 1989, at 1, col. 3 (all-Union ed.).
36. In the constantly changing Soviet political situation, the label "extremist" is usually applied to those groups or individuals whose opinions are beyond the fuzzy boundary of currently approved political views. So the "extremist" of yesterday who called for abolishing article 6 of the Soviet Constitution is now a true mainliner. See supra note 1.
37. Sessii Verkhovnykh Sovetov Soyuznykh Respublikh: Ukrainskaya SSR [Sessions of the Supreme Soviets of the Union Republics: Ukrainian SSR], Izvestia, No. 50, Feb. 19, 1990, at 1, col. 3 (all-Union ed.).
38. Russia's Greens, supra note 3, at 23.
There are two main reasons for this politicization of the Soviet environmental movement. First, the overall politicization and ideologization of Soviet society has deep historical roots. Each serious issue, including environmental concerns, immediately leads to sharp political and ideological polarization. Second, political activity is practically the only effective weapon available to the grassroots environmental movement. The Soviet legal system does not provide legal mechanisms for either citizen participation in environmental decisionmaking or for the enforcement of environmental laws by concerned individuals and groups. Therefore, ecologically-oriented groups attempting to resolve specific issues—the closure of a polluting enterprise or the protection of some natural site—have to gather political support from the local population. They must exert direct political pressure on different branches of state authority, by demonstrations, meetings, and other—sometimes illegal—means.

Political pressure on local, republic-level, and all-Union authorities has worked for a number of environmental problems. For example, the Save the Volga Committee after a five-year effort was able to stop work on the Volga Chogray Canal on the lower Volga River, even though 30 kilometers of the canal had already been dug at a cost of 96 million rubles.\(^{39}\)

Examples of local governments responding to citizen demands are multiplying. In Yerevan, local officials agreed to close down a chemical plant in response to public expressions of concern over its harmful effects on the health of the people in that area.\(^{40}\) In Priosersk, citizen protests succeeded in closing a major paper mill that had been dumping waste into Lake Ladoga.\(^{41}\)

Republic-level authorities have also agreed to stop environmentally harmful projects. In Gudermes, after fierce public discussions, the Council of Ministers of the Checheno-Ingushskoy Autonomous Republic decided to suspend construction of a biochemical plant after receiving opinions from independent ecological experts.\(^{42}\) In response to public activism, construction of a nuclear power plant in the Crimea was halted; instead, a training center for nuclear station operators will be created on the site.\(^{43}\) Public activity led to the closing of a Novokokandskiy chemical plant by the decision of the State Committee for Environmental Protection of the Uzbek Soviet Republic.\(^{44}\) Although ten years of work had

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40. French, supra note 10, at 27.
41. Id.
42. Stroitelstvo Biokhimzavoda Priostanovleno [Construction of Biochemical Plant Halted], Izvestia, No. 54, Feb. 23, 1990, at 2, col. 1 (all-Union ed.).
43. Krymskoi AES Ne Budet [Crimean Nuclear Power Plant is Not to Be], Izvestia, No. 301, Oct. 28, 1989, at 3, col. 4 (all-Union ed.).
44. Zakryli Khimzavod [Chemical Factory Closed], Izvestia, No. 203, July 22, 1989, at 2, col. 1 (all-Union ed.).
been invested in the building of a large hydroelectric power plant at Hydeni in the Soviet Republic of Georgia, work was suspended until the opinions of independent experts became available.45

Indeed, citizen pressure has succeeded in bringing about environmentally motivated decisions by the Central Committee of the Communist Party and the Council of Ministers of the U.S.S.R. For instance, the industrial development of the Yamal peninsula was stopped by a decision of the U.S.S.R. Council of Ministers.46 Two other well-known examples of citizen pressure are the Lake Baikal controversy and the Siberian and Northern European rivers diversion projects. Lake Baikal, one of the most beautiful lakes in the world, which contains 80% of the Soviet Union's fresh-water supply and 20% of the world's fresh-water supply, had been terribly polluted by wastes produced by the paper manufacturing industry.47 As a result of the wide public debate about Lake Baikal, the Central Committee of the Soviet Communist Party and the U.S.S.R. Council of Ministers passed a resolution in 1987 entitled “The Protection and Rational Utilization of the Natural Resources of the Lake Baikal Basin, 1987-1995.”48 Its provisions are more drastic and comprehensive than those envisioned in any previous resolution on Lake Baikal. Baikal is to be regarded not just as a lake, but as a large and complex ecosystem with complex regional links. All industrial development in the Lake Baikal area is to be pursued on a strictly scientific basis under a very strict system of pollution control.49 A shoreline protective belt has been established in which the felling of trees is permitted only for the purpose of forest thinning. By the start of 1988, logging was to be prohibited on three million hectares of woodland in the area, and the area of woodland under protection will increase.50 Many of the local timber industry facilities have to be reequipped for reforestation and some of the paper mills will have to be shut down.51 Nevertheless, the problems of Lake Baikal are far from final resolution because big enterprises and government

45. Esli Vzyat v Rashchyot Ekologiyu [Whether to Take the Ecology into Account], Izvestia, No. 48, Feb. 17, 1989, at 1, col. 7 (all-Union ed.).
46. Nastupleniye na Yamal Priostanovleno [Advances on Yamal Peninsula Halted], Izvestia, No. 70, Mar. 11, 1989, at 1, col. 1. (all-Union ed.).
47. French, supra note 10, at 24. For background on the Lake Baikal controversy, see C. ZIEGLER, supra note 3, at 53-57.
49. Id.
50. Id.
51. Baikalsky Sindrom [Baikal Syndrome], Izvestia, No. 125, May 5, 1989, at 2, col. 5 (all-Union ed.).
agencies implement approved measures very slowly. At a May 1990 special meeting of the Presidium of the Russian Soviet Federated Socialist Republic Council of Ministers, officials revealed that the most important measures in the 1987 Lake Baikal resolution have not yet been implemented and that the environment of the Lake Baikal basin continues to deteriorate.

Similarly, public outcry over the proposed diversion of Siberian rivers to irrigate the arid Central Asian plains led to a 1986 decree of the Central Committee of the Communist Party of the Soviet Union and the U.S.S.R. Council of Ministers that stopped the project for the time being. Scientists and environmentalists raised serious concerns about the project's effects on the ecological balance of Siberia. Taking into account broad public demands, the decree called for further study of the economic and ecological problems connected with this project before allowing any action to be taken.

Such drastic responses are costly solutions to environmental problems, especially in light of the Soviet Union's grave economic problems. According to Nikolay I. Ryzhkov, Chairman of the U.S.S.R. Council of Ministers, the closure of a simple chemical plant in Armenia, brought about by environmentalist pressures, led to the shutdown of tens and even hundreds of different enterprises dependent upon the chemical plant's production. Many of these enterprises were producing chemicals and pharmaceuticals. Because of their closure, the Soviet Union has had to spend millions of rubles in hard currency from its scarce monetary reserves to buy drugs and medicines. These environmental victories demonstrate the new responsiveness of Soviet authorities to environmental concerns raised by Soviet citizens.

These successes—whether on the local or Union-wide level—were achieved by political means, not legal means. In general, the environmental movement has achieved results by exerting social and political pressure. However, changes are also taking place in the Soviet legal system that may eventually create an opportunity for Soviet citizens to use the courts for the purpose of protecting the environment. To understand
the magnitude and importance of these changes, one must examine the current system and content of Soviet law regarding the environment.

III

SOVIET ECOLOGICAL LAW: THE IMPACT OF LEGAL TRANSFORMATION

A. Sources of Soviet Ecological Law

Soviet ecological law does not set forth policies for the overall protection of the environment. Instead, these laws govern the rational use and protection of natural resources, such as land, waters, forests, minerals, wildlife, and protection of the atmosphere. They confer rights, obligations, and responsibilities on those who make use of natural resources, whether these users are individuals, entities such as collective farms, or state enterprises. Soviet ecological law also requires compensation for damage resulting from the misuse of natural resources and environmental abuse.

Whereas U.S. environmental law assumes that natural resources can be owned by private interests as well as by the State, Soviet ecological law until recently was based on the concept of exclusive State ownership of natural resources.59 Ecological law in the Soviet Union establishes legal requirements related to the environment for certain State agencies. For example, agencies might be required to follow special procedures for environmental management, such as registering natural resources and monitoring their use.60

The current system of Soviet ecological law was formulated in the 1960's and 1970's. The highest source61 of Soviet ecological law is the Constitution of the U.S.S.R.,62 which sets the foundation for the use and protection of natural resources.63 Legislative enactments of the U.S.S.R.


60. See Kolbasov, The Concept of Ecological Law, 4 CONN. J. INT'L L. 267, 277 (1989). Professor Kolbasov is the Deputy Director of the Institute of State and Law of the U.S.S.R. Academy of Science. He is considered the leading expert on Soviet environmental law. His article provides an excellent, brief background on the history, modern concepts, and trends of Soviet ecological law.

61. In modern Soviet legal theory, every branch of law has its own “sources of law” (istochnik prava). These sources have different legal meanings and authority depending on the level of competence of the legislative or administrative bodies that enact them.


63. The articles in the Soviet Constitution that pertain to the environment are: the right of exclusive State ownership of the land, its minerals, water, and forests (article 11); the right of collective farms and citizens to use land (articles 12 and 13); the duty of the State to take measures for the regeneration of natural wealth, the improvement of the human environment, and the protection and rational use of the land, its minerals, the air, water resources, and flora
Congress of People's Deputies and the Supreme Soviet, called zakony, are considered the next highest laws in the Soviet Union. A zkon of the U.S.S.R. is considered adopted when it has been approved in each chamber of the Supreme Soviet by a majority of the deputies. A zkon can also be enacted by a majority of the Congress of People's Deputies and by an all-Union referendum. These laws are comparable to legislation passed by the U.S. Congress. Among the zakony are several laws concerning environmental issues. There are all-Union laws concerning land, water, minerals, forests, the protection of wildlife, and the protection of the atmosphere. Under zakony in the hierarchy of sources of law are the decrees, statutes, departmental rules, instructions, and standards issued by the Council of Ministers of the U.S.S.R. and the central government agencies, state committees, and ministries.

The fifteen Republics that form the Soviet Union also have their own Republic-level congresses and supreme soviets, which enact zakony of the Republics. In addition, each Republic has its own codes regarding and fauna (article 18); the duty of the citizens of the U.S.S.R. to care for nature and protect its wealth (article 67); and the duties of local agencies of state power and administration to coordinate and control land use and the conservation of nature (article 147). KONST. SSSR (1988).

64. The Congress of People's Deputies is the state body with the highest degree of authority. It consists of 2,250 deputies selected for five-year terms according to 3 different methods: 750 deputies are selected from local districts on the basis of equal representation, 750 are selected from units of nationalities, and 750 are selected from various organizations. See KONST. SSSR ch. 15, arts. 108-127 (1988).

The Supreme Soviet is the continually active legislative body of state authority. It consists of two chambers: the Soviet of Nationalities and the Soviet of the Union. The two chambers have equal numbers of deputies and equal powers. The deputies for these chambers are elected from the Congress of People's Deputies by constituencies of equal populations. The Soviet of Nationalities is elected from the Congress of People's Deputies on the following basis: 11 deputies from each Union Republic, 4 deputies from each Autonomous Republic, 2 deputies from each Autonomous Region, and 1 deputy from each Autonomous Area. See id.

65. Id.


73. Each of the all-Union Fundamentals of Legislation of the U.S.S.R. and of the Union Republics pertaining to aspects of the environment authorizes the Republics to pass their own
ing the use of land, water, minerals, and forestry, as well as its own laws regarding the use of animals, the protection of nature, and the protection of the atmosphere. In theory, these codes differ according to the specific environmental features of each Soviet Republic. These codes are not analogous to the U.S. Code in that they are not compilations of different statutes. Rather, they consist of a single statute devoted to one substantive area of the law. For example, the Forestry Code of the Russian Soviet Federated Socialist Republic consists of 130 articles covering the rights, obligations, and responsibilities of the various persons and entities who use forestry resources. Republic-level government agencies also issue statutes and decrees. Last in the hierarchy of sources of law are the decisions of the local bodies of state authority.

Sources of law relating to the environment can also be found in the administrative and criminal laws, including the articles providing measures of administrative responsibility and criminal liability for many ecological violations and crimes.\(^4\) In contrast to the United States, the Soviet legal system does not provide for civil administrative liability. Administrative punishment usually consists of a fine imposed by authorized agencies or local Soviets of People's Deputies. These fines are not severe; one hundred rubles would be the highest amount levied.\(^5\) In addition to such fines, however, the violator may also have to pay damages in accordance with Soviet civil and ecological law. Criminal sanctions are quite severe for various types of ecological crimes. Sentences range from 6 months of correctional tasks to 10 years of imprisonment, and the court may impose criminal fines as high as 25,000 rubles.\(^6\)

The principal difference between the systems of law of the United States and the Soviet Union is that the Soviet Union has no tradition of common law or judicial rulemaking. Common law causes of action that have been useful for environmental protection in other legal traditions—such as nuisance actions and the imposition of strict liability for ultrahazardous activity—are unknown in the Soviet Union. The role of Soviet courts is to interpret zakony, to decide disputes on a case-by-case basis, and to enforce the law.\(^7\) The decisions of the courts cannot create new laws or regulations, although the opinions issued by the supreme courts of the U.S.S.R. and the Union Republics provide binding guidance for lower Soviet courts.\(^8\) Thus, the development of ecological law in the

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\(^4\) See Kolbasov, supra note 60, at 272-74.

\(^5\) Soviet rubles are not easily translated into a U.S. dollar equivalent. For the average Soviet worker, 100 rubles is approximately one-half of a month's salary.

\(^6\) Kolbasov, supra note 60, at 274.


\(^8\) This is obviously in sharp contrast to the United States, where courts have been in-
Soviet Union will come from the enactment of new legislation and not from the decisions of Soviet courts.

B. Recent Changes in the Soviet Legal System and Their Implications for Environmental Protection

1. Changes in Ecological Law and Land Policy

The process of perestroika is bringing several important changes to Soviet ecological law. For example, the right of entities such as state farms or industries to use natural resources without paying appropriate compensation has been abolished. In the recent past, the Soviet Union maintained that the unpaid use of natural resources was one of the advantages and privileges of socialism. Until early 1990, the Soviet system recognized only exclusive state ownership of land. When the State allowed the land to be used by persons or collective farms, there was no appreciable charge. Now, however, authorities recognize that such free use engendered the attitude that “if I don’t pay anything, I don’t need to worry about the proper use and protection of these resources.” The first statute addressing this problem was the Law of the State Enterprises of the U.S.S.R., passed in 1987. Under this law every enterprise in the Soviet Union must pay for the use of land, water, and other natural resources. This law was an important step toward providing more protection for natural resources because, in theory, it encourages enterprises to increase the efficiency of their use of such resources.

The next development of the idea of payment for use of natural resources came in a January 1988 decree from the Council of Ministers and the Central Committee of the Communist Party. The decree provided for two kinds of payments for the use of natural resources and authorized a number of state agencies to issue implementing rules. The first kind of payment is for the use of the natural resource. It is to be calculated according to the availability, renewability, and economic value of the resource, along with other factors. The second type of payment compensates for the emission of pollutants into the environment. In addition, enterprises emitting pollutants at rates higher than legislated standards will be subject to progressively higher penalties. These are revolution-


80. O Korennoy Perestroyke Dela Okhrany Prirody v Strane [On the Radical Restructuring of Environmental Protection in the U.S.S.R.], 1988 SP SSSR, No. 6, item 14 [hereinafter Environmental Perestroika Decree].

81. Id. at ¶ 15.

82. Id. at ¶¶ 16-18.

83. Id.
ary changes in Soviet ecological law, requiring many changes in other rules and regulations pertaining to the use of natural resources.

Another very important change permits local authorities to lease natural resources, such as land, water, and forests, to individuals and enterprises. Formerly, leasing of such resources by an individual or enterprise was considered a crime. In addition to being subject to the threat of criminal punishment, the lessees had to return everything raised on the land, or its monetary equivalent, to the government. But in December 1989, a new law was enacted permitting persons or entities to lease land and other natural resources for five-year terms or longer. In March 1990, another law defined who has authority to lease land and set other leasing conditions. These new laws designated the lease as a very important and useful method for managing the use of natural resources.

Closely linked with the new mandates to lease land and charge fees for the use of natural resources is the basic issue of property rights. This is a very sensitive ideological issue for Soviet society. Orthodox Marxism contends that private property is at the root of the exploitation of the working class. Throughout Soviet history, state ownership of natural resources and capital goods has been considered one of the main advantages of socialism. Interestingly, the new property law enacted in March 1990 permits individual ownership of some types of property where private ownership had been strictly prohibited before. Instead of exclusive state ownership of natural resources, the law states that these resources are “the inalienable common wealth of the peoples living in the territory in question.”

The quoted language notwithstanding, these new laws introduce a form of land possession new to the Soviet Union: lifelong possession with the right to inherit. However, the incomplete and unclear nature of many provisions of these laws, along with their incompatibility with many existing legislative provisions, is certain to be the cause of many future legal and administrative problems and conflicts. In fact, a pas-
sionate debate about permissible forms of ownership of natural resources under socialism is now raging in the popular press and in scientific and legal literature. The proponents of the explicit legalization of private land ownership are in the minority. Most members of the scientific and legal profession believe that such innovation will neither resolve environmental problems nor facilitate agricultural productivity. They argue that private ownership of land exploits nature and runs counter to fundamental socialist principals of social justice. In addition, they question whether the state could adequately control the allocation and use of land if it were in private hands.

There is no question that introducing private ownership of natural resources into the Soviet Union would contradict the Soviet legal system and would require the restructuring of Soviet ecological law. The new provisions permitting the leasing of natural resources, establishing usage charges, and expanding permissible forms of ownership are not yet integrated into the Soviet Union's basic ecological laws. For example, some environmental laws contain provisions that do not permit the leasing of other natural resources; these will require revision. Furthermore, allowing individuals and enterprises to own land may be justifiable only for specific types of natural resources. For example, individual ownership of land may be suitable only for agricultural land. Any introduction of diverse forms of ownership of natural resources will also require the development of laws and administrative structures able to resolve problems and conflicts and guard the public interest in protecting the environment.

These changes in environmental law and the new trends in land policy are revolutionary for Soviet society, but equally revolutionary for Soviet ecological law are changes occurring in other areas of the Soviet legal system. Historically, the weakest link in the Soviet Union's system of legal protection for the environment has been law enforcement. The main obstacle has been the absence of effective judicial mechanisms to force government bodies and polluting enterprises to comply with existing laws. One step toward removing this obstacle was a new law passed in October 1989 by the Supreme Soviet of the U.S.S.R. entitled "On the Procedure of Appealing Unlawful Actions of State Administr-

The scientific community of the Soviet Union is currently discussing the wisdom of abolishing state ownership of natural resources. For a very illustrative discussion, see, e.g., Chya Ty, Zemlya? [Whose Are You, Earth?], Pravda, Feb. 16, 1990, at 3, col. 1.

90. Id.
91. Id.
tive Bodies and Officials Infringing upon the Rights of Citizens.” This law provides citizens with the right to dispute with state officials. Article 58 of the Soviet Constitution has long stated that citizens have the right to lodge a complaint against the actions of officials and government bodies, but Article 58 specifies that “complaints shall be examined according to the procedure and within the time limit established by law.” Laws providing a workable procedure were not enacted by the 1980 deadline. In 1987, a law was passed that seemed to establish a procedure for implementing Article 58, but this law enabled citizens to lodge complaints only against an official’s individual act. A citizen with a complaint against a decision or action made collectively—and most decisions made by local authorities are approved collectively—had no legal recourse. The October 1989 law ensures the right to lodge a complaint in court against both individual and collective decisions by officials and state administrative bodies. While this law gives some legal basis for grassroots environmental activity, more development of this right is needed before citizens groups may effectively use the Soviet legal system to compel government agencies to take action on issues of environmental protection.

Another important development concerning the enforcement of Soviet ecological law is the creation of a special Department for Nature Protection in the Office of the Attorney General. These so-called ecological prosecutors have broad discretionary powers. They can, for example, issue orders to shut down the activities of polluting enterprises.

2. Changes in Administrative Structure

Perestroika is also causing deep changes in environmental administration. Traditionally, Soviet environmental administration has had a very complicated structure involving many government bodies with overlapping duties and responsibilities. Administration of environmental matters is divided between two types of government bodies. In the first group are government bodies with general competence such as the

93. KONST. SSSR art. 58 (1988).
95. Id. at 117.
96. Individuals only have standing to sue an agency if they have been personally injured by the action. See infra note 109 and accompanying text.
98. Nuzhny Realnye Rezultaty [We Need Real Results], 1989 SOTS. ZAK., No. 6, at 19.
In the second group are bodies with special competence, such as the State Committee on Hydrometeorology and Environmental Monitoring. Until the beginning of 1988, more than ten ministries and agencies had jurisdiction over some area of environmental protection. At times there have been conflicts of interest because the main objective of each ministry or agency is usually to make natural resources productive, rather than to preserve them.

In January 1988, the State Committee for Nature Protection of the U.S.S.R. (Goskompriroda) was organized as a new and independent government body. Goskompriroda is similar to the U.S. Environmental Protection Agency in that it is an executive agency. It answers to the Council of Ministries of the U.S.S.R. This committee consolidates all power in the area of environmental protection and subsumes the authorities and responsibilities of eight other state committees, ministries, and agencies. The decree under which Goskompriroda was organized confers a range of important rights and authorities for the control of environmental protection. The tasks of Goskompriroda include the centralized management and control of all nature protection activities in the country; the development and implementation of corresponding policies for and coordination of all other government bodies carrying on activities that affect the environment; preparation of "expert ecological assessments" (the Soviet equivalent of environmental impact reports); public education; administrative hearings and enforcement actions to bring about compliance with environmental laws; and participation in preparing drafts of environmental legislation.

Goskompriroda is currently developing a draft of a strategic ecological program for the U.S.S.R. Unfortunately, not all Soviet ministries have turned over their inspection responsibilities to Goskompriroda at this time, and many agencies are actively resisting this process. Legislative bodies continue to work intensively to delineate the duties and responsibilities of Goskompriroda and other government bodies.

100. Id.
101. Id.
103. Environmental Perestroika Decree, supra note 80.
104. Id.
106. See Robinson, supra note 102, at 384; Yablokov Interview, supra note 19 ("Goskompriroda right now is a very weak ministry. . . . Right now the division of responsibility between Goskompriroda and other ministries is under way. But those other ministries don't want to give up their functions.").
Strengthening the legal authority of Goskompriroda would greatly enhance the process of implementing and enforcing environmental laws. Up to now, the lack of enforcement power has been the weakest element in the Soviet system of legal protection for nature. However, one new and very promising trend is the delegation of authority by official bodies to public interest groups and organizations. For example, an independent U.S.S.R. Committee for Public Assessment has been created to study all proposed legislation and other government projects to determine their potential impact on the environment. On the local level, a special inter-Republic Committee for the Salvation of the Asov Sea was created in November 1989 in the Ukrainian town of Mariupol. This is a voluntary public body charged with the task of coordinating the efforts of state authorities and environmental public interest organizations, as well as individual citizens. This committee will have standing to sue all bodies and enterprises polluting the Asov Sea. These are quite important new structures for several reasons: they permit regional coordination, they formalize a process for public participation, and they enlist the public support needed for adequate enforcement of environmental protection laws.

IV
SUGGESTIONS FOR FUTURE DEVELOPMENTS IN SOVIET ENVIRONMENTAL LAW

The changes discussed above are fundamental and far-reaching. But they are only a start. Securing sufficient protection for the Soviet Union's environment will require other substantial changes in the Soviet legal system. Developing Soviet administrative law in the areas of agency decisionmaking and accountability would be an important beginning. Presently in the Soviet Union there is no legal mechanism for public participation in agency decisionmaking processes. Soviet administrative law does not provide for public hearings or for a public comment stage during the preparation of expert ecological assessments.

The Soviet Union also has no tradition of judicial review of administrative acts. The new law establishing a procedure for citizens to file complaints against state administrative bodies and officials provides a remedy only for the citizen who has been individually wronged. It does not provide for judicial review of administrative decisions in gen-

109. See Decree on Appeals, supra note 92. According to article 2 of the law, the standing to sue administrative bodies is limited to when the official or administrative body illegally imposes an obligation on a citizen or illegally deprives a citizen of his opportunity to fully or partially exercise the rights granted to him or her by law.
eral. Soviet ecological law could be strengthened by the addition of more detailed rules providing for judicial review of environmental administration.

Another major deficiency of the Soviet legal system is the absence of laws providing for access to information. Glasnost has only begun in this area. At the moment, concerned groups and citizens have no legal basis or guarantees for receiving environmental information or guidelines from government officials. The United States' "freedom of information" and "right to know" laws may be useful models.

Finally, there is no all-Union law establishing uniform guidelines for environmental protection, although the Soviet Republics have republic-level laws concerning environmental protection. Such an all-Union law is currently under discussion. According to a November 1989 decree from the Supreme Soviet of the U.S.S.R., the Council of Ministers of the U.S.S.R. is to submit a draft bill of this law to the Supreme Soviet soon.

In many ways, this November 1989 decree is a very important legal document. It marks the first time that the Soviet Union's dangerous ecological situation has been openly recognized on such a high official level. The decree states that the local Soviets of People's Deputies have to provide free information about the environmental situation in their areas, including information regarding all local sources of pollution and any accidents having ecological consequences. This is a serious step toward establishing freedom of information in the environmental area. In addition, the decree outlines directions for future environmental legislation, including the development of all-Union laws concerning specially protected lands, the protection of flora, and the use of atomic power and nuclear safety.

Not yet under way but much needed is a Soviet National Environmental Policy Act to institutionalize environmental protection as a national priority and to establish an environmental impact assessment process with a public comment stage. Moreover, to break through bureaucratic inertia regarding environmental enforcement, all existing and future environmental laws should have articles providing standing for citizens to bring suits to enforce environmental laws and regulations. The lack of such provisions compels concerned citizens to invent their own "homemade" means for holding persons and organizations accountable for the environmental problems they cause. For example, several groups of environmental activists organized a "public ecological trial" in

112. November 27 Decree, supra note 5.
113. Id. at ¶ 4.
Volgograd in June 1990. They wanted to accuse publicly those responsible for worsening the Volga region’s ecological situation, especially the builders of the Volga-Don-2 canal. Organizers of the “trial” sent the evidence they collected to the Office of the Attorney General, in the hope that the documentation would lead to official prosecution.114

Legislation concerning responses to and liability for industrial wastes, groundwater contamination, and recycling problems is also needed.115 In addition, the Soviet Union needs to improve legislation regulating air pollution, water contamination, and the use of pesticides.

The Soviet Union should also take this opportunity to enact legislation based on the principle that harming nature should be economically unprofitable. Any person or enterprise polluting the environment or destroying natural resources should be held accountable through a system of fines and enforced restoration of the damaged resource. Incorporating this “polluter pays” principle must, however, be done in conjunction with changing and developing the overall Soviet legal system, as Soviet ecological law cannot exist apart from this system. Finally, the protection of the environment will depend to a very large extent on the successful resolution of the Soviet Union’s economic problems, for only a strong economy can spend large amounts of money for environmental protection.

CONCLUSION

In the Soviet Union, environmental law is undergoing important changes. Soviet laws require further development to ensure the purity of the natural environment for the present and the future, and to encourage the harmonious relationship between an economically developing society and nature. The changes taking place in the Soviet legal system and in Soviet ecological law are inseparable from the process of changing the Soviet way of life and the Soviet Union itself. More than anything, this process needs time. It needs serious effort. It needs understanding on the part of other countries that there are no simple answers to complicated questions.

114. Kanal Volga-Don-2 v Svete Glasnosti [The Volga-Don-2 Canal in the Light of Glasnost], Izvestia, June 9, 1990, at 6, col. 1; Imenem Volgi [In the Name of the Volga], Izvestia, June 13, 1990, at 6, col.1.
