International Institute for Applied Systems Analysis
Schlossplatz 1 • A-2361 Laxenburg • Austria
Telephone: (+43 2236) 807 342 • Fax: (+43 2236) 71313
E-mail: publications@iiasa.ac.at • Internet: www.iiasa.ac.at

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The Russian Forest Sector and Legislation in Transition

Minna Pappila (minpap@utu.fi)

Approved by

Sten Nilsson
Leader, Forest Resources Project

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Contents

Abstract

This paper is about legislation and the forest sector in Russia. The author examines several fields of law identifying what are the most serious shortcomings in legislation hindering a sustainable recovery of the Russian forest sector. The study begins by discussing problems of legislative power and federalism. The division of power in Russia is unclear in many respects and federalism is still looking for its most suitable form. These uncertainties affect the use of law in every sector of society. Ownership of forestland, on the other hand, appears to be more settled for the time being. The federal state owns all the forests. There are, however, still some obscurities concerning property rights, especially in the regulation of leasing forestland. Business transactions in Russian forest enterprises are a combination of old and new, mainly old, but there is a possibility that the trend will slowly turn towards a modern way of doing business and settling disputes between enterprises. The use of Arbitration Courts, for example, is increasing. When it comes to forest and nature protection legislation, there are, as well as in other legislations, inconsistencies that might be an obstacle for nature protection and sustainable forestry in Russia. Generally speaking, the poor level of implementing laws, the enforcement of court decisions, and the lack of trust in official institutions, are the biggest hurdles on the way towards positive changes in the Russian forest sector.

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About the Author

In 1998, Minna Pappila received her LL.M. degree in the Faculty of Law at the University of Turku, Finland. The title of her LL.M. thesis was “The Regulation of Forest Use and the Protection of Biodiversity in Finland” (in Finnish). After her graduation, she began working in the Faculty of Law as a research assistant and is now writing there her licentiate thesis about nature protection and forest legislation in Finland and Russia.

During her participation in IIASA’s 1999 Young Scientists Summer Program she has been working on legislative issues in the Sustainable Boreal Forest Resources project, particularly in its subproject “Institutions and the Emergence of Markets — Transition in the Russian Forest Sector”.

The Russian Forest Sector and Legislation in Transition

Minna Pappila

1. Introduction

This study was conducted within the Sustainable Boreal Forest Resources project and its subproject on institutional aspects (*Institutions and the Emergence of Markets – Transition in the Russian Forest Sector*). As a part of the subproject on institutions, 221 interviews have been conducted among the actors of the forest sector in different regions of the Russian Federation. Similar interviews were also conducted in Sweden. I have mostly used the general information from the interviews, and have sometimes examined, in more detail, the interviews conducted in the Republic of Karelia. My work is, however, only partly based on the information collected in the interviews. The main sources have been western and, to some extent, Russian literature and articles as well as, of course, Russian laws.

The Russian forest sector — like all of Russian society — is in transition from an undemocratic one-party system with a centrally planned economy to a democracy and a liberal market economy. The beginning of the changes was like a quick jump from command economy into something that nobody really knew how to control. The changes that are still needed are huge and it is not enough just to change formal institutions. There are many other factors connected to the changes. For example, the Russians' attitudes towards the law may hinder changes: in Soviet times the law was not aimed at securing a person's rights against the state and other people. The law was more a political tool used for political purposes and for interests of a small group of people (Tikhomirov, 1996). The fact "how law was applied depended very much on who was involved and his or her political connections" (Hendley, 1997:230). It is no wonder that people still do not trust laws or dare to rely on the rights the laws guarantee them. One might ask, of course, whether the *new* laws and lawmakers deserve the people's trust? Perhaps Russians have a good reason for finding the old ways and informal rules more reliable than the new ones.

An enormous number of laws have been passed in order to enable private enterprises to function and to try to secure their legal rights as well as to impose certain limits on their practices (taxes, environmental requirements, etc.). The reconstruction of legislation has happened at a rapid pace; more than 100 new laws and about 200 presidential decrees have appeared every year (Remington *et al.*, 1998). Contradictory to all expectations, the changes in the Russian political and economic sphere only seem to have lead to a severe economic crisis. Legislative changes are part of the transition; a sort of framework for changes. Laws are meant to guide the way to changes and to provide "the new rules of the game".

So, is there something wrong with the laws, with the implementation of laws, or are there other reasons why laws do not seem to be of great help for the transition in Russia? Many laws related to economic development, for example, have been initiated by international financial institutions. Western experts have also done a lot of drafting work for new laws, and the resulting laws have often been incomprehensible to ordinary Russian businessmen (Hendley, 1997). Russian policy makers and their western advisors argued that "the laws and legal institutions had to be reshaped in a rapid and necessarily top-down fashion. This so-called development argument was justified on the grounds that the resulting system would be better for all concerned over the long run" (Hendley, 1997:228–229). It has not seemed to work very well so far. Old rules and business practices still prevail among Russian enterprises.

In this study we look into the different fields of law, which in one way or another, are related to the forest sector, and try to identify different kinds of problems in the legislation. Are there implementation problems, unclear division of powers, etc? First, we scrutinize the federalism and legislative powers in general. There are doubts whether Russian federalism really works (Ordeshook, 1996), whether the law-making powers are really clear in Russia (Remington *et al.*, 1998), etc. Unclear hierarchy of laws, division of powers, and contradicting laws affect the credibility of the whole legislation and also makes it very difficult to implement laws. These problems can be seen in the forest sector as well as in other sectors of the Russian economy.

Secondly, we take a look at some of the legislation that affects relations between the state and enterprises. Taxation has been chosen because it has been revealed in IIASA's institutional framework interviews that almost half of the Russian forest enterprises consider excessive taxation as the most serious problem for their work.

The third part of the study includes some practices and laws shaping economic relations in Russia. Enforcement of business agreements is a serious problem for forest enterprises and therefore the *Arbitrazh* court is an interesting issue: it seems to be 'common knowledge' that Russian enterprises only rely on private enforcers. IIASA's institutional framework interviews, conducted in different parts of Russia, and some other recent research results (Hendley *et al*., 1999b) might however show that the picture is not that black and white after all.

And last but not least, we discuss some regulations concerning forestry practices and nature protection. The question of environmental and nature protection legislation emerges quite naturally since the existence of the whole forest sector is directly dependent upon natural resources, and also, ultimately, there can be no economic sustainability without environmental sustainability.

2. Federalism and the Division of Legislative Powers

2.1 Hierarchy of Written Norms in Russia

The Russian Federation is a civil law country and after 80 years with a socialist legal system the contemporary system now seems to approach the group of Germanic legal systems. The Constitution of the Russian Federation established the division of state powers between the legislative, executive, and judicial power. The new constitution also established a Constitutional Court.

The hierarchy of norms specifies which laws are the highest, i.e., which laws determine the content as well as the procedure of making lower norms. "The Constitution of the Russian Federation has the supreme legal force … throughout the territory of the Russian Federation" (article 15.1 of the Constitution)[1]. Laws and other legal norms may not contravene the Constitution.

Second highest in the hierarchy stand the so-called federal constitutional laws. Federal laws must be passed on the issues stated in the Constitution (article 108). The procedure to enact a constitutional law is more difficult than the procedure to enact an ordinary law. A constitutional federal law must be adopted by three-quarters of the votes of the Federal Council and two-thirds of the Duma[2]. Ordinary federal laws, which constitute the fourth level in the hierarchy, shall not contravene federal constitutional laws. An adoption of a law requires the majority of the votes in the Duma and half of the votes in the Federation Council (article 105.4). With two-thirds of the votes the Duma can turn down a rejection of the Federal Council to approve a law. The president signs and promulgates all federal laws and if he does not do it the law goes back to the Duma and the Council for re-examination (article 107.3).

According to article 15.4 of the Constitution the "generally recognized principles and norms of international law and international treaties", to which Russia is a party, "are a constituent part of its legal system". The Duma and the Federation Council ratify international treaties using the same procedure as they use to pass many of the federal laws. Therefore, it seems that ratified treaties would fall between constitutional laws and ordinary federal laws in the hierarchy of norms, i.e., on the third level (Suksi, 1997).

On the next level in the hierarchy are the presidential directives and orders. These norms may not contravene the Constitution or the federal laws, but since some of them are not being published anywhere, it is not possible to scrutinize whether they contravene laws or not. The Constitutional Court, for example, does not have access to most of these secret decrees (Suksi, 1997).

Below the presidential decrees are governmental resolutions and instructions for the implementation of laws and presidential directives (Suksi, 1997). The President can annul a governmental resolution that conflicts with a law or directive (Consitution article 115).

Finally, there are acts enacted by federal authorities; ministries, committees, etc. They have been directed straight at people and enterprises and lower governmental bodies (Teets and Saladin, 1996). These acts should, of course, be in accordance with all the above mentioned acts.

In addition to the federal laws and other regulations, there are regional laws and acts; laws enacted by the legislative bodies and other authorities of the federal subjects.

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[1] The text of the Constitution is from URL: http://www.russiatoday.com/constit/constit1.php3 (3 September 1999).

[2] The Federation Council and the Duma constitute the Federal Assembly. The Federation Council is "the upper chamber" and consists of two representatives from each federal subject of Russia; one from the legislative and another from the executive organ of the subject. The Duma is "the lower chamber" and consists of 450 elected deputies (article 95 of the Constitution).

Regional legislation should not contravene federal laws. Some issues, however, belong exclusively to the jurisdiction of subjects.

2.2. Legislative Conflicts Between the State Duma and the President

The president of Russia has extremely strong powers. He has executive power (manages the government and appoints the Prime Minister), legislative power, and he also has a power over the Russian court system; he nominates federal judges and the general prosecutor as well as judges of lower levels (Teets and Saladin, 1996).

Within his legislative powers, the president has the right to propose legislation and amendments (article 104.1 of the Constitution), to veto laws passed by the Duma and the Federal Council (article 107.3), and he can issue edicts and decrees (article 90*)* in several policy areas (Teets and Saladin, 1996). The Constitutional Court approved the prevailing situation by ruling that the President may issue decrees even on topics where the Constitution requires laws, if there is a gap in the existing legislation. The President's decree will be in force until the Duma has adopted a law on the same topic. Consequently, the President's powers will slowly be narrowed when the Duma is adopting more and more laws (Remington *et al.*, 1998). But, on the other hand, the decision of the Constitutional Court might have hindered the President's willingness to make compromises with the Duma in legislative work.

Presidential decrees and executive orders may not contravene the Constitution or federal laws (article. 90.3). The major shortcoming seems to be the 'secret decrees' of the President. Not even the Constitutional Court has access to most of the secret decrees and there is no procedure for reviewing them. Nevertheless, the Constitutional Court has in fact obtained some of the secret decrees. The presidential decree about Chechnya was a secret one, but the Constitutional Court nevertheless delivered a verdict about it, stating that "the president may use his decree power to deploy defence and security forces to suppress domestic threats to public order" (Remington *et al.*, 1998:310). The Constitution requires that laws must be published before they can be applied. And it states specifically that normative legal acts affecting human and civil rights, freedom and duties may not be applied unless officially published (article 15.3). Secret presidential decrees obviously seem to be in conflict with this article of the Constitution (Suksi, 1997).

President Yeltsin has used his veto power, for example, in the case of the Land Code; he has repeatedly refrained from signing the Land Code produced by the Duma. The President considers the (draft) Land Code too restrictive and lacking several important provisions from a market perspective (Remington *et al.*, 1998). The Duma and the President have not reached an understanding even if the President has promised that several laws aimed at restricting the sales of agricultural lands, at allocating the land between federal, regional and municipal governments, etc., would be enacted as well (Kozyr, 1998).

2.3. The Legislative Powers of Federation Subjects

The Russian Federation consists of 89 regions, so called *subjects* (republics, areas, provinces, two cities of federal significance, an autonomous province, and districts)

which also have legislative powers. Subjects of the Russian Federation are now more independent from the state than the regions were during the Soviet "federalism".[3] After the collapse of the Soviet Union the demands of the subjects for more sovereignty grew, and federalism seemed to be the only workable way to keep Russia from falling apart (Smith, 1995; Kirkow, 1998). The division of powers between the center and subjects is still unclear, however, and administrative competencies are not well defined. Local and central administrators compete for control and power and these two levels are not very closely connected to each other. The lack of center-region links hinders the regional implementation of federal-level decisions (Kirkow, 1998).

The Constitution of the Russian Federation determines the areas of federal jurisdiction and the areas of joint jurisdiction. According to article 71 of the Constitution federal taxes and duties, foreign economic relations and the judicial system, for example, fall within the jurisdiction of the Russian Federation. Within joint jurisdiction are issues related to ownership, use and disposal of land, mineral resources, water, and other natural resources; the establishment of general principles of taxation and levying of duties in the Russian Federation; land, water and forestry legislation, and legislation on mineral resources and on environmental protection, etc. (article 72). According to article 73, subjects have jurisdiction in the fields that, according to the Constitution, neither fall under federal nor joint jurisdiction.

There have been some infringements of the Russian Constitution in regional legislation. Some republics, for example, claim that their own constitution is superior to the federal constitution. Some subjects have also claimed that certain issues that, according to the Constitution, belong to the joint jurisdiction of the center and subjects actually belong to the jurisdiction of a subject exclusively. Another difficult issue is the control of natural resources. Violations of human rights have also been found in a number of regional legislation (Kirkow, 1998). Some of the local forest laws, such as the forest law of Karelia, have had some inconsistencies with federal legislation.

One reason for the contradiction between federal and regional law is apparently the unclear division of labor in the field of joint jurisdiction. The federal government has no means of prior surveillance of local legislation in order to avoid inconsistencies. The only way to control that regional law does not contradict the Russian Constitution or federal laws is to appeal to the Constitutional Court, which takes approximately five years (Kunelius, 1998).

2.4. Administrative Agreements Between the Russian Federation and Its Subjects

According to the Constitution, the federal organs of executive power can make an agreement with the organs of executive power of the subjects. They can transfer the implementation of some of their powers to the other party, provided that this does not conflict with the Russian Constitution or federal laws (article 78, paragraph 3), and vice versa. There was no description of the procedure of making these agreements until recently. A new law "On the principles of dividing power between the Russian Federation government and the regions" determines, among other things, the procedure

[3] Smith (1995) calls the federalism of the Soviet Union the "federal colonialism".

of their preparation. This law took effect at the end of July 1999 (EastWest Institute, 1999b) and, if implemented, will introduce many welcome changes to center-subject relations; clearer procedures, openness, etc.

These agreements emerged when there was a risk that the Federation would fall apart (Kunelius, 1998). Some of the subjects wanted to have more sovereignty and the agreements helped to calm down the situation. The first agreement was signed in 1994 between the Federation and the Republic of Tatarstan. Later, in 1996, while campaigning for the presidential election, President Yeltsin and several federal subjects entered into these kinds of agreements. The agreements delegated considerable powers to federal subjects in various areas, including the environment and natural resources (Teets and Saladin, 1996; Kunelius, 1998).

Some agreements have been signed for an indefinite period of time. The president of Russia, or both President and Prime Minister, have signed these agreements on behalf of the Federation. In addition to the basic agreement, there are normally 7–15 special agreements connected to the basic agreement. Special agreements are more detailed and concrete normally focusing on a specific problem of the subject and are usually made for a period of five years. These agreements, which are signed on the governmental level, have *not* always been *public* documents. These specific and sometimes secret agreements have been more important than the very general basic agreements. There are secret agreements, for example, about natural resources (Kunelius, 1998; Fedorov, 1999). Hopefully, the use of secret agreements has now come to an end; one aim of the law "On the principles of dividing power…" is the termination of making secret agreements (EastWest Institute, 1999b).

It seems that the agreements have not been used for the purpose that they were most likely designed: to make the division of powers between the center and the subjects more clear. The division of the exercise of power, however, has not been clearly defined in the agreements, even if this would be the field that obviously is one of the main problems in the subject-federal relationships and the implementation of reforms in Russia. The aim in the early 1990s was just to keep the subjects within the federal state, but the need for this is not pertinent anymore. The Russian Federation has not been acting like a federal state dealing more or less equally with its regions, but more as if it were making agreements with different foreign countries (Kunelius, 1998, Ordeshook 1996). Secret "special agreements" have undermined the whole idea of federalism and democracy. Therefore the new law "On the principles of dividing power…" is a step towards a healthier federalism.

In some of the agreements the Russian Federation has given rights to subjects rights, which according to the Russian Constitution, can only belong to the jurisdiction of the Federation. None of these agreements have so far been under the scrutiny of the Constitutional Court of Russia (Kunelius, 1998). Perhaps the Constitutional Court has not even had access to these secret agreements, as in the case with most of the secret presidential decrees? Following the ratification of the law "On the principles of dividing power…" all existing treaties and agreements should be re-examined during the next three years (EastWest Institute, 1999). If re-examining really will take place, it is likely to cause changes in many existing agreements.

Agreements will now most likely be signed with all the subjects of the Russian Federation, which means that they will lose their special meaning but that does not necessarily make them less important (Kunelius, 1998). In such a big and diverse

country as Russia, it is necessary that authorities, to some extent, are able to take local circumstances into account, but new agreements will hopefully be made in accordance with the federal constitution and federal law.

Secret agreements have probably been considered to be good for the federation subject, but they severely undermine the whole idea of democracy and federalism. This practice also makes all kinds of public participation and scrutiny impossible, which in turn, reduces the general trust in the legislation. Transparency of law making would be an important part on the way to making the whole society more democratic and for people to believe in democratic ways of decision making.

3. The Forest Sector and the State

3.1. Land Ownership

3.1.1. Property Rights and the Constitution

Well-defined property rights are seen as an important part of establishing a free market system, towards which Russia is supposed to be on its way. Many economists think that if the property rights of a country do not include the right to sell or lease property, including natural resources, the system does not secure an effective use of property (Ostrom, 1996). Russia has already taken a step towards a market economy by privatizing enterprises and partly liberalizing the regulation on land. However, issues related to land have remained partly unclear and property rights are still being modified (Kozyr, 1998). Privatization of land is still a problematic issue in Russia. For example, the Duma and the President have not been able to agree upon the new land code, and the question of the ownership of forests has caused tension and uncertainty between the center and the federal subjects.

Article 9.1 of the Constitution stipulates that “the land and other natural resources are used and protected in the Russian Federation as the basis of the life and activity of the peoples inhabiting the corresponding territory”. According to the second paragraph, the land and other natural resources may be in private, state, municipal or other forms of ownership. Thus, the Constitution no longer puts any restrictions on any kind of private ownership.

Article 36.2 of the Constitution, which concerns private property states that owners shall freely “possess, utilize, and dispose of land and other natural resources provided that this does not damage the environment and does not violate the rights and legitimate interests of others”.

In addition to the protection of private property, Chapter 2 of the Russian Constitution contains the traditional rights and liberties: equality, privacy, freedom of movement, freedom of conscience, religion and speech and freedom of association.

3.1.2. Ownership of Land and Forests

In the Soviet Union all land belonged to the state and the legislation acknowledged only public ownership. All of the *land*, however, no longer belongs to the state. The Land

Code of 1991 made private ownership possible, but there were still many restrictions attached to it; for example, under certain circumstances confiscation of farm land was possible without any compensation to the private owner and the code prohibited sales of agricultural land (Brooks and Lerman, 1994). In 1993, President Yeltsin issued a decree, which declared almost half of the regulations (all provisions that were not market oriented) of the Land Code null and void. Already in June 1994 draft versions of a new Land Code was introduced to the Duma, but the President and the Duma still have not reached a common understanding of the new land code (Kozyr, 1998).

The recent development of property rights on forests, however, differs from the general development of property rights. At the end of the last century, about 63 percent of the forests were state owned, and the rest belonged to private forest owners. After the 1917 revolution all Russian forests were nationalized. Now, forests are still state owned in spite of privatization of other kinds of state property. Currently, the Federal Forest Service controls 94 percent of all forests, 1.3 percent belongs to the State Committee of the Environment and Natural Resources Conservation, 3.8 percent to kolkhozes and sovkhozes and 0.9 percent to other ministers and agencies (Ilyin, 1997b).

According to the old forest law, the Principles of Forest Legislation (1993), the Russian Federation and its subjects jointly owned forest resources. This left the question of ownership open and unclear and, as a matter of fact, many subjects declared that natural resources belonged to the ownership of the subject (Ilyin, 1997b).

As stated in article 9 of the Constitution, all forms of ownership are possible for land and other natural resources. Yet the current Forest Code of the Russian Federation limits the ownership of forests to federal ownership and to that of federation subjects. The forest resources basically fall into the category of federal state ownership (article 19.1). Only parts of it *may* be transferred to the possession of a subject, by virtue of a federal law (article 19.2). This means that transfer of ownership is not allowed by means of a mere agreement between the federal state and a subject.

Many Russians have argued that the Forest Code is in conflict with the Constitution, and the administration of Khabarovsk Krai and the head of the Karelian government took this question to the Constitutional Court. The Constitutional Court of Russia announced its decision at the beginning of 1998. The Court stated that the Forest Code of the Russian Federation does not contradict the Constitution and that forests do belong to federal ownership, even if it is possible to transfer tracts of forest to a subject. Forests belong to the whole Russian nation and form a special kind of property, about which there is a specific legislation. Therefore, selling, mortgaging, etc., of a forest area is not allowed (Il'ina, 1998). The decision of the Constitutional Court does not leave much space for speculation. It clearly indicates that acts issued by some of the subjects, regulating private forest ownership, are unconstitutional.

In the Republic of Karelia, a sort of private ownership is possible for local farmers. They can have certain amounts of forest for lifetime possession and their children inherit this kind of land "ownership", but farmers are not allowed to sell or lease out the land. The farmer has the right to practice forestry and other economic activities in the forest, but he also has an obligation to take care of forest regeneration, protection, etc. These farmers do not have to pay anything for using the forest. The local district council decides about giving land to farmers (Myllynen, 1996). This kind of "ownership" is closer to "free-of-charge use of a parcel of the forest fund" (FC, article 36) than real,

and thus unconstitutional, private ownership of forests. According to article 36 of the Forest Code, agreements on free-of-charge use can be made, though for only 49 years.

3.1.3. Private versus Public Ownership

There has been discussion about the privatization of Russian forests. At this stage, nobody seems to suggest a total privatization of Russian forests, but there are many who speak in favor of establishing several other forms of forest ownership. Federal ownership is seen as a transitory stage, which should be abolished after the stabilization of the Russian economy and society. Possible categories of ownership are, for example, federal forests, forests of the subjects and municipal forests, but there are also advocates of private ownership (Petrov, 1997; Ilyin, 1997b).

Advocates of the ownership of subjects underline the specific ecological, social and economic situations in the different subjects of the Russian Federation. One of the arguments in favor of public ownership is the importance of Russian forests for the stabilization of the global climate. It is a vital question to the whole world and some people think that it is not possible to secure this function of the Russian taiga if private ownership would prevail. There are also forests that are especially set aside for protection purposes (so called group I forests) and are of vital importance for public interest in the form of water protection, protection against wind, erosion, etc., and therefore should not be privatized. Another, more philosophical argument supporting state ownership, is that human beings did not create forests, but forests are a gift of nature which can not belong to anyone in particular, which leads to the conclusion that the state is the only possible owner (Petrov, 1997).

Then again, “ownership” is a wide concept and ownership is never exclusive. There are always some restrictions to the ownership for the benefit of neighbors or the community, state, nature protection, etc. Even if the Russian Federation is the ‘ultimate’ owner of all the forests in Russia, other kinds of property rights may be connected to forests, and the federal state (the authorities) must also respect those rights and the forest legislation regulating the use of forests. The same would apply to a private owner of a forest. The current Forest Code allows different kinds of leasing forestland, for 49 years at most.

The economic or ecological situation does not necessarily depend on the form of ownership. There are wealthy forest sectors in countries like Canada, where the state owns 94 percent of the forests, and Finland, where 64 percent of the forests are privately owned. A state, as an owner, can neglect, for example, nature protection just as well as a private owner. There was a lot of overuse of forests in some regions of the Soviet Union despite their public ownership (The World Bank, 1997). On the other hand, the establishment of national parks and other protection areas is usually easier and cheaper on public land. Protection of private property normally means that an owner must receive some kind of compensation for the loss of land or profits in the event of confiscation or other limitations to the use of his property. This protection is by no means exclusive; in most countries some restrictions are allowed on private property without any compensation. The owner must bear some costs or losses for the benefit of the “public good”, i.e., water protection, recreation or other important social needs.

The fact that clearly speaks against a fast privatization of the Russian forests is the unstable economic and social situation in the country. Would those who might use forests in a sustainable (ecologically, socially, economically) way be able to buy the

forests? Or would it all end up in hands of a few privileged groups of people, who are not interested in the well-being of forest nature or the local people?

Kregel *et al.* (1994) suggest that most of the state property could actually be "privatized" by using long (50–100 years) leasing contracts. This would allow the stabilization of the economic and social situation and later on even ordinary Russians would, hopefully, have a chance to buy former state property.

The possibility to lease forest areas should be quite enough to ensure the recovery of the Russian forest sector. Another question is, whether the authorities distribute leasing contracts in an open and equal manner? The rules for forest leasing, competitions and auctions do not necessarily ensure fair competitions.

> Indeed, it is not the choice of ownership pattern that matters most, but rather that the ownership pattern chosen is applied fairly and consistently and with transparency. Under such conditions, *management rules* will determine the pace and direction of forest and forest sector development (The World Bank, 1997:68).

3.1.4. Leasing Agreements

If one considers *alienation* (i.e., the right to sell or lease) as an essential part of an efficient land use regime, the system of leasing in Russia should be more carefully scrutinized. Forests are state-owned, but the Forest Code lists other forms of forest usage. Article 22 stipulates that forest areas may be given to a citizen or a juridical person. Allowed forms are lease, free-of-charge use, concession and short-term use. Lease and short-term use are the most common forms of forest use for enterprises. The idea of this leasing system came from Canada, where there is a tenure system for leasing state owned land. The first regulation on leasing in Russia was already given in 1988 (Sheingauz *et al.*, 1995).

A leasing contract can be made for either 1–49 years or for 1–5 years. Long term contracts (1–49 years) are concluded on the basis of a forest competition (FC, article 31 and 35). A short term leasing contract is based on a decision of the authorities (article 34). The other possibility to obtain a felling permit is to obtain a decision for short-term (less than a year) use from the authorities (article 43) or to win a forest auction (article 44).

Forest enterprises themselves prefer long-term contracts since it allows them to make long-term plans for their future activities. It is still common that logging is based on a decision of an authority and not on a short- or long-term leasing contract. Almost half of the interviewed harvest companies base their logging activities on the decision of the authorities, not on a lease agreement (IIASA Institutional Framework Database, 1999). Direct negotiations with local authorities leave more room for corruption or partiality than would open competitions or auctions (Sheingauz *et al.*, 1995).

The government of the Republic of Karelia has given a statute on leasing forest tracts. According to that statute, enterprises can first obtain a leasing agreement for only 5 years at most. If the enterprise follows all laws and regulations during the 5 year period, it may receive a long-term contract, for a maximum of 49 years. The authorities also think that long-term contracts, at least 25 years, are better than short-term contracts (Nikolaev, 1999). The question arises whether these regulations on lease and short-term use are applied fairly and with transparency to all enterprises?

Until 1998, the *Resolution on Leasing Forest Land* (1993, No. 712) was in force and gave priority to previously state-owned companies to rent those forest areas that they had been using before privatization, presuming that those companies were still in the forest business (article 3.2) (see also Sheingauz *et al.*, 1995). This resolution clearly violated article 34.3 of the Forest Code (1997), which states that forests shall be given for lease "to forest users who have been operating in a given area for a considerable period of time and who have production capacities"; there is nothing about ex-state-enterprises. The new *Resolution on Leasing of a Forest Parcel* (1998) has no longer got the same restrictive and patronizing regulation as had the old resolution. The new resolution gives the right to short-term lease for all old companies in the area that have the capacity to harvest and process wood. It depends on the interpretation of "considerable period of time" whether or not new companies will get a fair chance to enter into leasing agreements.

The forest competition regulations make it possible for authorities to favor certain companies. Article 7 of the *Statute of Forest Competition Regulations for Assignment of Russian Forest Stock Parcels for Leasing* (1997) defines the forms of forest competition: there can be either open or *closed* competitions. Closed competition means that forest competition authorities selects those companies who can attend the competition. There is a good chance that authorities are, on the basis of personal relations, favoring previously state-owned enterprises at the expense of new enterprises. So far, in the Republic of Karelia only a few companies have long-term lease contracts, which are always based on forest competitions; there is probably not yet much experience on "fairness" of forest competitions. In the interviews with Karelian enterprises, the form of forest competitions has not seemed to be a problem to enterprises (IIASA Institutional Framework Database, 1999).

A similar clause exists in the *Statute of Timber Auction Holding Regulations* (1997). In the case of selling especially large volumes of timber, the number of participants may be restricted to those specially invited (article 6). In the Republic of Karelia, they have only started to convene forest auctions this year (Nikolaev, 1999), so it can not be said what kinds of auction forms authorities have preferred and whether enterprises have been treated equally.

It can already be concluded, after this brief overview, that leasing regulations still make it possible for authorities to favor old forest enterprises and prevent real competition in this field. The regulations on forest auctions and competition are, nevertheless, still relatively new and it is difficult to say how these rules have been implemented in practice by local authorities. Because leasing will probably be the main form of forest use in the future, and an important element in the Russian concept of forest ownership, the rules should be clear and implemented transparently by taking local inhabitants and biodiversity protection into due account.

3.2. Tax Regulations

No doubt the Russian tax system has been most complex and unclear, and the way it has been implemented has been unfair and unreasonable (The World Bank, 1997, Buckberg 1997). All this has resulted in large scale tax evasion. The authorities have tried to compensate the low tax collection rates by imposing more and higher taxes and penalties, without distinguishing unintended errors and clear intentional tax evasion.

The fact that, in 1996, nearly 35 percent of tax revenues came from penalties describes the current situation well (Antel, 1997).

One reason for the complexity has been the big variety of governmental bodies that take part in regulating and enforcing taxation. According to Antel (1997) "these include the President and various sections in his office, the Duma, local administrators, the Ministry of Finance and various sections therein, the State Tax Service, regional and local tax inspectorates, the Tax Police, local customs authorities, the State Customs Committee and the Central Bank". The authorities sometimes issue "official letters", etc., that they are not, in fact, authorized to issue. Enforcement authorities nevertheless follow these illegal instructions. These continually changing official letters and other such rules, make it very difficult for companies to follow the tax "legislation" (Antel, 1997). Another factor that diminishes the credibility of tax authorities is tax administration grants "ad hoc tax exemptions" (Curtis, 1998).

In September 1997, there were 12,877 legislative norms in force in Russia. Decrees of tax authorities were the fourth biggest group of regulations, comprising 1,444 decrees. Customs regulations were the biggest group at that time with 2,202 regulations (Kunelius, 1998). Tax legislation has been under reform for some years already and the first part of the Tax Code is already in force *(Nalogovyi kodeks Rossiiskoi Federatsii, chast' pervaia*, 1998). Tax reform is aimed at "simplifying the tax system and making it more transparent, easing the tax burden on producers, ensuring fair personal taxes and improving tax collection" (CCET, 1997:1–2). Several partial reforms have been introduced earlier relating, for example, to profit tax legislation.

The first part of the Tax Code has already simplified taxation by reducing the number of taxes from almost 200 to 28 taxes (Baker and McKenzie, 1997). This number includes 16 federal taxes (VAT, income tax, tax on forests, ecological taxes, etc.), 7 regional taxes (sales tax, real estate tax, etc.) and 5 local taxes (e.g., tax on land) (article 13–15). According to article 12 of the Tax Code, it is not possible to impose other regional or local taxes, i.e., taxes that are not mentioned in the Tax Code. There is no mention about federal taxes, though.

Part II of the new Tax Code is currently under discussion in the Duma, but the new law is not likely to be be in force until the beginning of 2000. Before enacting the new law some of the necessary changes have been and will be introduced in the form of separate laws (Bubel, 1999).

The number of taxes or the tax rate are not, however, the only important factors; tax deductions also play an important role. At least two years ago the social responsibilities (housing, health care, child care, etc.) of enterprises were not yet deductible in taxation, even if those responsibilities have officially been transferred to local authorities (Blank, 1997). Local municipalities often do not have money to fulfill these responsibilities (The World Bank, 1997). Non-deductibility of social responsibilities can have a major effect especially in the forest sector, where more than half of the forest enterprises still have some kind of social responsibilities (IIASA Institutional Framework Database, 1999).

If we use the Arbitrazh court cases as an indicator, we can see that problems with tax officials are increasing. In 1996, in 85 percent of administrative cases (that is, conflicts between the state and a company) the other party was a tax authority. In 1998, it increased to 89 percent. And, as the total number of administrative cases has also increased (the total amount of cases was almost 500,000 in 1998), there was a 17

percent increase in the number of cases compared to 1997. The amount of "tax cases" was about 60,000 in 1998. The biggest group of cases was about annulment of a tax authority's decision, and in general, the court decided to diminish the amount of taxes or penalties that tax authorities had imposed on an enterprise. A part of this increase is due to a decision of the Constitutional Court. It stated that certain statutes of tax inspections were unconstitutional and this led to increased litigation against tax authorities (Yakovleva, 1998; Hendley, 1998).

The poor level of tax collection has severe impacts on the Russian economy (FIPC, 1998). The State has not found effective ways to collect taxes: only about one fifth of Russian enterprises pay taxes on a regular basis (Kazakina and Dneprovski, 1996). Under these circumstances it is no wonder that the federal state has budgetary problems. It is almost impossible to predict the amount of each year's tax revenues if it is so vaguely connected to the actual level of taxation. But, on the other hand, since the taxation system has been so arbitrary it is no wonder that the state has not been able to convince the citizens about the necessity of paying taxes.

3.3. Bankruptcy

3.3.1. Problems

About 30 percent of Russian industrial enterprises are actually insolvent, but bankruptcies are still very uncommon (Goldstein and Holland, 1996). An effective bankruptcy legislation is seen as a precondition for successful economic reforms in Russia (CCET, 1994). Bankruptcy legislation can be used to force inefficient enterprises to be restructured and too inefficient ones to be closed down completely. Soviet-time enterprise managers are still controlling most privatized Russian companies and they are unlikely to restructure "their" enterprises without pressure from the outside. Bankruptcy (insolvency) legislation is thought to be the right way to restructure and rehabilitate enterprises (Havlik, 1996; CCET, 1994).

The state policy towards enterprises has not been consistent with efforts to introduce the institution of bankruptcy in Russia. For years, the Central Bank, for example, gave credit to insolvent enterprises, which in turn were able to continue their business in old manners and did not need to restructure or go bankrupt (Goldstein and Holland, 1996). Problems to implement bankruptcy legislation are partly due to the inadequate accounting system in Russia (Yakolev, 1994). Various subsidies are also still common and might prevent restructuring (Havlik, 1996). In the Province of Chelyabinsk the local administration has promised to protect the 200 most important enterprises from possible bankruptcy. As many as 2,000 firms could currently be declared bankrupt in Chelyabinsk (EastWest Institute, 1999a). It is clear that re-organization rules in bankruptcy legislation are quite vital since the consequences of a massive wave of bankruptcies would be too hard on people and society and there would be a risk of social unrest as well (CCET, 1994). But on the other hand, there is a risk that the bankruptcy procedure allows "restructured" companies to get rid of their debts and continue their business the same way as before.

It seems that the new Bankruptcy Law (Federal Law No. 6-FZ, dated January 8, 1998, "On Bankruptcy"), in many cases, is not implemented at all, i.e., the companies that should go bankrupt according to the Bankruptcy Law, are not declared bankrupt in

practice. The fact that, despite the severe economic crisis, there have hardly been any bankruptcies at all clearly indicates the failure to introduce a functioning bankruptcy institution in Russia (Havlik, 1996).

There have also been cases when an enterprise has gone bankrupt and a new enterprise has started to operate on the premises of the old enterprise, but the new enterprise still has to pay the liabilities of the old enterprise (IIASA Institutional Framework Database, 1999). On the other hand, intentional or fictive bankruptcies also seem to be a problem in Russia.

3.3.2. Legislation and Insolvency

The new federal Bankruptcy Law (1998) has strengthened the rules against deliberate or fictive bankruptcies. The law also attempts to make the bankruptcy procedure quicker and now the creditors have some say in the procedure (Borghesani *et al.,* 1998). But there are still many uncertainties in this law, which may cause problems especially when trying to rehabilitate companies. When the rules are unclear enterprises are reluctant to test how the restructuring really works (Bloxham, 1998). This unfortunately diminishes the importance of bankruptcy proceedings as a way to restructure enterprises.

There are also clear inconsistencies between the Bankruptcy Law and the Civil Code. The ranking of creditors is different in these laws and it is not clear which of them has priority (Bloxham, 1998).

The wording of article 7.2 of the Bankruptcy Law can make it difficult to file suits against an enterprise manager in the case of potentially fictitious bankruptcies: a debtor can start bankruptcy proceedings voluntarily if "circumstances clearly indicate that the debtor will be unable to perform monetary obligations…" There is no definition of what "clearly indicates" an inability to perform payments. The Russian accounting system can also make it difficult to really estimate the financial state of an enterprise (Borghesani *et al.,* 1998).

4. Transactions Between Russian Enterprises

4.1. Business Practices and Law

4.1.1. Legal or Illegal Means?

Despite the fact that many laws relating to enterprises have been revised during the last few years, it has been unclear whether these laws are really effective, whether the enterprises rely on them to settle disputes, etc. A common phenomenon in transition economies seems to be that they "have achieved greater progress in extensiveness than in the effectiveness of financial laws" (EBRD, 1998:2). International financial institutes have been heavily involved in reforming the Russian economic legislation and sometimes they might not have clearly understood the situation in Russia. Some of the laws have turned out to be unsuitable for Russia's current economic situation or are simply not understandable for ordinary entrepreneurs (Hendley, 1997).

The study of Hendley *et al.* (1999b) does not support the common view, that in Russia there are not necessary legal institutions to enforce contracts or maintain property rights and that companies commonly rely on private enforcers (the mafia being only one of them) in their business relations. Actually, it seems that a surprisingly small amount, only 3 percent, of the enterprises in Hendley's (1999b) survey say that they rely on private enforcers. (But on the other hand, one might wonder how eager enterprises are to tell an interviewer about illegal enforcing methods?)

Interviews conducted on behalf of IIASA indicate that about one-fifth of the Russian forest companies use arbitration to enforce buying arrangements. There are, however, very big differences between various regions. Among Russian enterprises in general, about one-fourth say that they use *Arbitrazh* Courts to solve business problems (Hendley *et al.*, 1999b).

4.1.2. The Use of Contracts

Decisions of the *Arbitrazh* courts mostly rely on documentary evidence and therefore the use of written contracts is almost a prerequisite for taking a case to an *Arbitrazh* court. Thus the use of written and well-formulated contracts would make the enforceability of contracts better (Hendley, 1997; Hendley *et al.*, 1999b). In many cases, written contracts are not being used among Russian enterprises: of 221 enterprises in the IIASA study only 50–75 percent use written contracts and about 10 percent oral agreements. In Sweden, almost all of the interviewed companies use written contracts (IIASA Institutional Framework Database, 1999). The meaning and usefulness of individually negotiated contracts is obviously not yet quite clear in Russia. Not relying on written contracts can partly explain why enterprise officials do not trust the *Arbitrazh* courts either. Also, barter is an important part of paying arrangements in Russia and since barter is partly used to avoid taxes, it is clear that there are no written contracts on such agreements. There are probably some other similar, "practical" reasons for not making use of contracts.

During the Soviet period, the text of contracts was not decided by the enterprises themselves, but was given from the authorities. It was also much more important to follow the economic plan than to follow contracts (Hendley *et al.*, 1997). Even the task of Soviet *Arbitrazh* was, according to the title of the 1931 law on arbitration courts, to settle disputes between state enterprises "…in a direction that ensures the consolidation of the plan and contract discipline…" (Arbitration Court, 1999). It was possible to make changes to contracts only through a burdensome "protocol of disagreements" procedure, which took a lot of time (exchange of disagreement letters) and led to complex and unclear contracts. About 20 percent of Russian companies still use the protocols of disagreement in order to reach an agreement with a potential buyer. In the case of routine sellings and buyings standard contracts are common everywhere in the world, but in Russia the use of standard contracts is obviously not limited only to these cases (Hendley *et al.*, 1999a).

The insignificance of contracts in Soviet times and the current difficult economic situation have probably led to a business behavior where the terms of a contract are not very important. Prices, for example, are fixed in contracts but there are usually negotiations about them afterwards. Clauses about when goods ought to be delivered or the amounts ordered are also often irrelevant since the negotiations start again when the

buyer receives money (or other products for barter) to pay for the product (Hendley *et al.*, 1997).

4.1.3. Payment Arrangements

There are several ways used by Russian forest enterprises to arrange selling payments. The most frequently used ways are to combine barter with the "cash on delivery" payment (33 percent of the interviewed companies in the IIASA study use this) or to add prepayment to "cash on delivery and barter" paying practice (35 percent). Eight percent of Russian forest enterprises demand the whole payment before delivery. Violations of agreements are so common in Russia that it is quite obvious that many enterprises want at least part of the payment before or on delivery: 82 percent of the interviewed Russian forest enterprises consider violations of selling agreements a problem for their business. Then again, in Sweden, 67 percent of the interviewed companies accept payment after delivery, and the rest want payment partly on delivery and partly after delivery (IIASA Institutional Framework Database, 1999).

4.1.4. The Knowledge of Legislation

The knowledge of law among Russian enterprise officials is outdated. In 1996, many general directors and legal directors of enterprises in Moscow and Yekaterinburg had very poor knowledge of the new legislation (contract law, company law, etc.) that departed from old practice (Hendley *et al.*, 1997). But the problem does not only concern the knowledge of the law but also the lack of chances to use it. In Russian companies lawyers are mainly regarded as technicians whose work is to make standard agreements or to advise whether a contract is legal or illegal. They do not "interfere" in formulating business strategies. The minor role of lawyers in Russian companies does not speed up the adoption of new legal means to handle contractual relations and transactions in general (Hendley *et al.*, 1997).

On the other hand, Russian enterprise officials do have a good knowledge of the law that is consistent with their earlier (Soviet) practices or legislation (Hendley *et al.*, 1997). Russian companies should clearly put more emphasis on getting access to current legislation and using the possibilities it offers. There is no lack of "inventiveness" in Russian enterprises. They have created systems of non-monetary exchanges (barter, various forms of commercial papers) in order to survive, and are now, for several reasons, reluctant to change their ways to something new (Hendley *et al.*, 1997).

4.1.5. Views on the Future

Despite the turmoil of transition, enterprises do profit from using new contractual and other business practices; when they work on contractual matters, when enterprise personnel has a good knowledge of current business laws, and when the company has given up old contractual practices (e.g., protocols) and started to use new ones (Hendley *et al.*, 1999b). The legal tools are there, but many companies are unable (lack of knowledge) or unwilling (lack of trust, prefer old ways) to use them. Hopefully, the "pioneer" firms will set a good example to other companies by showing that it pays to learn the new ways of making business. Slowly, a more comprehensive trust in

contracts and legal institutions might grow, which in turn will help reduce transaction costs in Russian enterprises and encourage more investments into the country.

4.2. The *Arbitrazh* Courts

4.2.1. The History and Tasks of the Arbitrazh Courts

The first tracks of some kind of commercial court in Russia date back to the year 1135. The first commercial courts that were similar to current arbitration courts were established in the beginning of the 19th century. In the Soviet Union, the *Gosarbitrazh (*The State Arbitration Court) solved disputes between state enterprises and it was to large extent a political tool to control the economic activities of enterprises (Arbitration Court). After the collapse of the Soviet Union, there was a need to create a new kind of commercial court to meet the demands of a more market-oriented economy. The old system of *Arbitrazh* courts was revised and a new procedural code of *Arbitrazh* courts was adopted in 1992 and was amended in 1995 by the constitutional law *On the Arbitration Courts in the Russian Federation* (Hendley, 1998; Arbitration Court, 1999).

There are three levels of *Arbitrazh* courts: regional level (82 courts), district level (10 appellate courts) and the Supreme Arbitration Court. Cases in arbitration courts can be divided into two categories: civil cases, i.e., those between companies or other private legal entities; and administrative cases, i.e., those against the governmental authorities (Arbitration Court, 1999). The amount of administrative cases has been steadily increasing; 4 percent of all cases in 1993 and 14 percent in 1997. This shows that enterprises are more willing than before to challenge the state and that they believe in the abilities and neutrality of the *Arbitrazh* court. It might also indicate growing problems with, for example, tax authorities (Hendley, 1998).

4.2.2. The Use of Arbitrazh Courts

The Soviet background has not made it is easy for the *Arbitrazh* court to gain the trust of private enterprises. After 1992, there was a remarkable decrease in the amount of cases taken to the *Arbitrazh* court and this has probably been one of the reasons why Western observers have not considered the Court very important (Hendley, 1998). *Arbitrazh* courts have been considered to be part of the Soviet legacy and they were not expected to be able to meet the requirements of a market oriented economy, even if the courts were totally reconstructed. Since 1995, the number of cases has increased again, now exceeding the number of cases in 1992. The earlier decline occurred at the same time as the whole system of *Arbitrazh* courts was changed, which might mostly explain the decline. Companies required a certain time to get to know the new “rules of the game” (Hendley, 1998).

During the last few years non-payment cases have been the largest single group of cases in the *Arbitrazh* courts. The highest peak was in 1995 when 57 percent of the cases were non-payment cases. Nowadays, they make up half of the cases solved in the *Arbitrazh* courts, but the difference between regions is notable: from 33 percent in Yaroslav Province to 60 percent in Leningrad Oblast (Hendley, 1998:Table 6). The number of non-payment cases rose significantly after the old economic system collapsed;

enterprises were privatized and it became more crucial for them to pay in time. But the amount of non-payment cases has not declined after the first shock of changes. Part of it can be explained by the fact that enterprises want to get a court decision in order to acquire payment even in very clear cases: in more than 40 percent of all cases the defendants never attended court at all. The defendant company often does not appear when the plaintiff's claim is clear and undisputable (Hendley, 1998).

4.2.3. Problems in Using Arbitrazh Courts

The *Arbitrazh* courts are claimed to be slow and expensive. This is not quite true, though. A more serious problem than delays and fees is apparently the difficulty of enforcing the judgements of the courts, about which no statistics are available, since the *Arbitrazh* courts do not keep records of what happens to cases after their decisions (Hendley, 1998). Enforcement problems surely make Arbitazh courts, and other courts as well, less tempting for enterprises. They have no use for a court decision if there is no efficient and legal way to enforce it.

The law on *Arbitrazh* courts requires that cases are solved within two months. Official statistics of *Arbitrazh* courts show that delays are not common and delays have never occurred in more than five percent of the cases decided in the courts. On the other hand, the amount of delays is increasing, but so is the number of cases. There are, once again, big differences between various regions. In the Altai Krai, 17.8 percent of all cases violated the two-month deadline in 1997, while in the Saratov Region only 0.8 percent of all cases were delayed (Hendley, 1998:Table 4). Of course, the question then arises of the reliability of court statistics. Why is there such a big gap between the general opinion on the slowness of *Arbitrazh* courts and the official statistics?

The filing fee (a certain percentage of the demanded amount of money) that a plaintiff company must pay at the time the case is filed is said to be too high and that it prevents poor companies from litigating. In reality, it is possible to delay paying the litigation fee if the petition is "well-grounded" (Hendley, 1998). Thus, if the plaintiff company wins the case it does not have to pay the fee at all, but the company that lost the case must pay. The possibility for delaying payment (more than 50 percent of such petitions are successful) should make the *Arbitrazh* court available also to cash-poor companies and the fee should not prevent companies from litigating. In Moscow, for example, about 20 percent of the enterprises use the opportunity to ask for delayed payment (Hendley, 1998). Whether poor companies are aware of this possibility and whether they can take the risk of losing if the case is unclear and complex is, of course, another question.

Despite the problems connected to the *Arbitrazh* courts, especially enforcement, there is a steady, growing trend of cases being brought to the courts. If obstacles for the enforcement of court decisions could be eliminated the situation in enforcing business agreements and the credibility of the court system would probably be much better.

5. The Forest Sector and Nature

5.1. Forests in Russia

After the collapse of the Soviet Union the amount of logging and forest production in general has decreased considerably: in 1985, timber removals were 338.8 million cubic meters and in 1996, 96.9 million cubic meters (Burdin *et al.*, 1998). For nature this has probably been a relief, but, unfortunately, at the same time a tragedy for many small forest communities.

As has been reported by Braden (1988), Levins (1992), Wishnick (1995), Pisarenko and Strakhov (1996) and The World Bank (1997) there are several environmental or social problems connected to Russian forestry and the forest industry. For example, in some areas there has been serious overharvesting of forests, in other areas the rights of indigenous peoples have been in conflict with commercial logging, and paper mills have caused severe water pollution in many places. Soil erosion, decline of water quality, and waterlogged permafrost-areas are some other disastrous results of forestry activities.

When it comes to nature and environment, Russia is a country of big contrasts. On the one hand, 15 percent of its land is said to consist of ecological disaster zones, and on the other hand, Russia still has vast untouched areas that scarcely exist anywhere else in the world: some of the last frontier forests of the world. Only half of the world's original forest remains and the decrease has mostly happened during the last few decades. One-fifth of the world's forest area is in Russia and Russia's forest policy has thus a considerable impact on the world's forests, biodiversity, climate change, etc. (Kotov and Nikitina, 1993; WRI, 1997).

> Endangered frontier forests in Russia are threatened mainly by logging. Mineral and energy exploration and set fires also impinge. Already portions of Russia's Far East and much of European Russia have been heavily logged. Until now, lack of infrastructure and outmoded harvesting practices kept much of Siberia's frontier forest undeveloped. Recent economic and political liberalisation may change the situation, however. International timber and trading corporations are looking to Siberian forests as a new source of supply as burgeoning global demand for timber strips other regions of valuable, accessible trees. Over the next decade or two, foreign capital, machinery, and road building could open much of Siberia's forest to logging, mining, and other damaging activities. (WRI, 1997)

By ratifying the *Convention on Biodiversity* in 1995, Russia has made a commitment "to establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; to promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings and to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity" (article 8 of the Convention). One should also bear in mind that in some areas, particularly in Siberia, the value of non-wood products (fruits, berries, nuts, mushrooms, medical plants, tree sap, honey, etc.) is higher than the value of timber (Pisarenko and Strakhov, 1996) and in these areas priority could be given to other activities than wood harvesting; for environmental and economic reasons.

5.2. Forests and Ecological Thinking

Marxist doctrine deprived nature of intrinsic value: nature is valuable only after people have started to use, develop and cultivate it; “a virgin forest is worthless, as man made no efforts to create it” (Petrov, 1997). It has not been a simple “common pool” problem of natural resource use in the Soviet Union since the state clearly was the owner and also regulated the use of natural resources. The problem was more that the state did not put much value on natural resources. The low prices on natural resources led to wasteful and negligent use of natural resources. Priority was on fulfilling economic plans. Nature protection rules were not of great importance (Kotov and Nikitina, 1993; Sheingauz *et al.*, 1995; Kirkow, 1998).

Nevertheless, Marxist doctrine is not the only one that has been criticized for overlooking the intrinsic values of nature. Also Western science has for centuries seen nature as a mechanism, which can be taken to pieces and managed and controlled as such. Mainstream western thinking separates human and nature: nature is merely a tool for reaching different aims of its dominators, human beings (Rissanen, 1998). Thus the attitude in western countries towards nature has not been much better than that reflected in Marxist thoughts.

Despite the very mechanical view of nature, Russian/Soviet forestry has in theory (i.e., on the level of formal rules), probably been more diverse and “multifunctional” than its counterparts in the wWest. In most western countries there have simply been either forests for commercial use of wood or protected forests. In Russia, the variety of management regimes has, at least on paper, been wider. The actual harvesting obviously has not been as “diverse”, but has rather been carried out in the form of large clear cut areas causing extensive overuse in several regions. Overharvesting is still likely to continue in some regions in Russia (Sheingauz *et al.*, 1995) and over 90 percent of commercial harvesting continues to be performed in the form of clear cuttings, carried out by obsolete, heavy equipment (Pisarenko and Strakhov, 1996).

Nevertheless, the protection of forests along waterways, for example, has already been practised in Russia for decades, while in Finland modest forest belts along rivers have been introduced into forest management only a few years ago. In western countries, nature or biodiversity protection in commercial forests is a fairly new phenomenon and concentrates partly on different things than in Russia. For example, in Russia there does not seem to be as much discussion about the importance of dead and decaying trees as in the west. In Russia, many means of protection have probably initially arisen from human needs; needs to protect water, farming land and human settlements from erosion, etc.

On the other hand, Russian forest management rules are perhaps even too detailed and difficult to follow; in reality management regimes are being followed in a much more general manner and some rules are followed more carefully than others. Detailed rules have become more or less just a way for *leskhozy* (local forest management units) to earn more money by fining enterprises, especially foreign ones, for violation of rules (Alvoittu, 1996).

One reason why these detailed forest management regimes were not very important or effective in Soviet times is also related to the fact that *leskhozy* had two incompatible tasks in the Soviet Union. On the one hand, they had to fulfill forest management tasks and, on the other hand, they had to maximize logging output. While doing this they

often violated silvicultural norms and the restrictions for the annual allowable cut (Kopylova, 1999). Reforestation, for example, was carried out far too seldom (Braden, 1988).

Thus, different forest management regimes have not been enough to ensure sustainable forestry in Russia. Besides excessive felling and severe overuse of forests in some areas, the efficiency of wood use has also been very poor in Russia. According to some estimates as much as 50 percent of the harvested timber was often wasted during felling, transportation and processing (Wishnick, 1995).

5.3. Regulation of Forestry and Forest Protection

The Russian Federation defines the basic outlines of the federal forest policy, the forest legislation, various forms of control and forest utilization, etc. The subjects of the federation may have their own forest legislation, but it must not be in conflict with federal legislation. The Federal Forest Service of Russia is the highest authority in forest resource management. The basic law regulating forestry is the *Forest Code* adopted in 1997.

Protection of forest nature in Russia is based on protected areas (nature reserves, national parks, etc.) and the division of forests into three categories; group I, II and III, and specially protected forests in those three groups. The *Forest Code* is the main regulator of forest use, but there are also several lower regulations about forestry (rules for thinning, forest auctions, etc.), as well as the *Law on Specially Protected Areas* that affect forestry.

On the other hand, the official rules for harvesting wood or for nature protection have little meaning if regional overharvesting or illegal harvesting is commonplace, or if the rules are otherwise not followed. Some western experts have estimated that the amount of illegal harvesting could be as large as 40 percent of the total amount of legal harvesting (The State Committee, 1997).

Some of the most important laws affecting forestry are:

- The Forest Code (Code No. 22-F3, 29/1/1997).
- Statute of Timber Auction Holding Regulations (Order No. 99, 11/8/1997).
- Statute of Forest Competition Regulations for Assignments of Forest Stock Parcels for Leasing (Order No. 123, 30/9/1997).
- Government Resolution on Leasing of a Forest Parcel (No. 345, 24/3/1998).
- Regulations for Leasing Forest Fund Parcels (Order No. 55, 8/4/1998).
- Rules for Selling Standing Wood (Resolution No. 551, 1/6/1998).
- Instructions for Sanitary Cutting in the Russian Federation (Order No. 1458, 27/1/1998).
- Government Resolution on Minimum Payment Rates for Standing Timber Bought on Stump (Resolution No. 1199, 19/9/1997).
- Statute on Specially Protected Areas (Law No. 33-F3, 14/3/1995).

- Statute on Environmental Protection (Law No. 2060-1, 19.12.1991; amendments in 1992 and 1993).
- Statute on Ecological Ekspertiza (Law No. 174-F3, 23/11/1995).

About 10 percent of the interviewed Russian forest enterprises consider forest or environmental legislation as the most important obstacle for their work. In Sweden, about 17 percent considered it the biggest obstacle (IIASA Institutional Framework Database, 1999). Here, however, the relationship between Russian forest enterprises and the Forest Code will not be scrutinized, but rather the Forest Code and nature protection.

5.4. Forest Categories

5.4.1. Description of Categories

The first thing that is usually mentioned about the Russian forest management system is the division of forests into three different groups, which are managed in different ways. Russian forests were divided into different management groups soon after 1917. Later the system was developed further and in the 1920s there were already three different forest groups. The current division into three groups dates back to 1943, but there have been many reforms since then (Bogoliubov, 1997). The division of forests into such categories is the basis for both the use and protection of forests. There are different claims on forests and the management regimes have varied accordingly. The three categories also contain several "subcategories".

Articles 55–58 of the Forest Code define the different forest categories; group I, II and III. Article 114 stipulates which felling methods are possible in each category. More specified rules are in regulations and instructions (see above).

Group III is the forest group containing most forests: 71 percent of all Russian forests belong to this category. The main function of these forests is production of industrial wood (Nilsson and Shvidenko, 1998). In the beginning of the 1990s, it was estimated that 42 percent of group III forests were under exploitation, 34 percent are so-called reserve forests (for future exploitation), and 12 percent are "out of reach" (Kuusela, 1997).

Group II forests consist of protective forests near densely populated areas or forests in areas with insufficient forest resources. The aim is to maintain and improve quick growth and regeneration of these forests; they are for commercial use, but with certain limitations. Group II is the smallest of the three categories; only 7 percent of all forests belong to it (Kuusela, 1997).

Group I forests are mainly for ensuring the environmental and social functions of forests. Since 1948, the share of group I forests has increased from 2 to 22 percent (Kuusela, 1997).

Forests of group I are divided into *protective categories* and in all groups (I-III) there can be *specially protected forests*, where only a restricted forest use is possible (FC, article 55.3).

5.4.2. Logging in Group I Forests

Group I forests are divided into *20 protection categories*, which all have their own cutting regulations. These protection areas consist of, for example, forest belts along river banks and lakes, main railroad lines and highways, anti-erosion forests, green belts of settlements and economic entities and forests of national parks and nature reserves (FC, article 56).

Group I forests are not totally out of commercial use. There are some parts of group I forests, like nature reserves *(zapovedniki)*, that have been strictly protected, but in some categories of group I forests certain forms of logging are allowed.

If we look at the felling volumes in the Republic of Karelia in 1994, 15 percent of felling volume (merchantable wood) took place in group I forests, and 79 percent of this was final felling (mainly clear cutting). At the same time, 22 percent of Karelian forests belonged to group I (Myllynen, 1996). The intensity of harvesting was thus only a bit lower than in other groups. The forest legislation and other cutting regulations did not prohibit logging in Karelian group I forests. This example shows that it is incorrect to believe that *all* group I forests would be under very strict logging restrictions.

There seem to be, however, substantial differences between the subjects of the Russian Federation. In Archangel Oblast, for example, only 2 percent of logging took place in group I forests (26 percent of its forests belong to group I) (Myllynen, 1996). In Archangel there might be more strictly protected areas among group I forests, which could explain the difference.

5.4.3. Final Cutting in Group I Forests

According to the Forest Code, in group I forests final fellings are "carried out by methods that are aimed at improving the condition of stands, strengthening the natural conditions of forests, as well as for timely and sound use of overmature and mature forests" (article 114.3). This leaves wide powers of discretion to forest authorities. Does "timely and sound use of overmature and mature stands" mean that final felling are always allowed in all overmature and mature forest plots? On the other hand, this paragraph about final felling in group I forests does not apply to all group I forests.

Most of the protection categories of group I fall under paragraph 4 of article 114. Paragraph 4 allows only "intermediate and other cutting" in most of the protection categories. Those other protection categories that have not been mentioned in paragraph 4, and where final felling thus is allowed, are forest belts along riverbanks, lakes and other bodies of water; forest belts along main railways and highways; forests in deserts, semi-deserts, etc., and pine forest belts (excluding Siberian stone pine forests).

The new Forest Code seems to have loosened the protection of group I forests from what it used to be under the *Principles of Forest Legislation* (1993). The "Principles" allowed commercial logging in group I forests only in cases of pest infestation (Ecojuris, 1997; Alvoittu, 1996).

The Regulations on final felling (1993) state that the main forms of wood harvesting in group I forests are continuous cutting and selective cutting. Clear cutting shall be used only if no other harvesting method can ensure regeneration or the forest has lost its protection character (Alvoittu, 1996). The allowed size of a clear-cut area depends on

different things: forest category, vegetation zone and tree species. In the northern taiga, for example, a maximum size of a clear felling area in group I forest is 10–15 ha, in group II 15–20 ha and in group III 50 ha (Myllynen, 1996:Table 4.1).

There is no provision in the Forest Code that would prohibit leasing of group I forests. Article 4 of the Regulations for leasing forest fund parcels prohibits leasing of a forest parcel that is part of a state-run nature sanctuary. This restriction does not take into account, for example, forest belts around rivers and lakes. Therefore, it seems that group I forests can also be part of a lease contract.

5.5. From Forest Land to Non-forest Land

Forests all over the world are being cut and replaced by houses, roads, factories, fields, pastures, etc. Group I forests are perhaps slightly better protected against this kind of conversion of forest land to non-forest land, but still, the Forest Code does not mention any prerequisites that should be met before the conversion of group I forests could be allowed. The difference between the various forest categories is that the decision on group I forests has to be made on the federal level. The Government of the Russian Federation decides about conversion based on the proposal from the authorities of a federal subject. The government has strong power of discretion to converse group I forests into non-forest land. In the case of group II and III forests the government body of a federal subject is allowed to take conversion decisions.

At the beginning of 1998, the Supreme Court of Russia announced a decision about conversion of group I forests to non-forest lands to be clear-cut and used for commercial and industrial development, building summer cottages, etc. The Government of Russia had issued several decrees that converted over 36,000 hectares of group I forests to other categories without a federal level environmental impact review, a so-called *expertiza*. In its decision, the Court annulled all decrees and stated that federal *expertiza* is needed for governmental decisions on forest conversion (Kolesnikova, 1998; Ecojuris, 1998).

A draft land code of 1998 also threatened the protection of group I forests; it would have removed the procedural protection of this kind of forest. The draft would allow reclassification and privatization for housing construction, and there have been concerns that this right would be used as a roundabout route to privatization and then logging of group I forests (The Bulletin, 1998). The Duma has not yet adopted a new Land Code, so it is not possible to assess what kind of effects it will have on forests.

5.6. Specially Protected Forest Sites

According to Article 55 of the Forest Code it is possible to form specially protected forest sites (*osobo zashitnye ychastki lesov*) *in all forest categories (I-III*). In these forest sites only limited forest management is allowed and final felling may be totally prohibited. These forest tracts can be, for example, lake shores and banks of waterways, slopes of gorges, forests next to the border of non-forested land and habitats of rare or endangered animal and plant species.

Procedures to define a specially protected forest tract must be confirmed for each forest category separately (Forest Code, article 55.5). There is no mention in the Forest Code

which authorities should take part in the process, but unfortunately it is likely to be allowed only for forest authorities. Only local forest authorities can propose prohibition of final felling on protected forest tracts. It is a bit strange that the Forest Code does not mention environmental authorities here, even if it can be the question of habitats of endangered species, which clearly fall in the field and expertise of environmental authorities.

Another problem connected with the protection of specially protected forest tracts is that according to article 55.4 *final felling* may be prohibited, but there is no mention about other kinds of logging. Sanitary felling or thinning may also deteriorate a protected forest site, like a habitat of an endangered plant species.

5.7. Contradicting Laws or Just Shortcomings?

5.7.1. The Water Code and Forest Regulation

There is some inconsistency between the Forest Code and the *Water Code*. Article 111 of the Water Code determines protective zones even around/along objects that have not been mentioned in the Forest Code. The Water Code also prohibits final felling, whereas the Forest Code only limits the use of final felling in group I forests. Bogoliubov (1997) suggests that this *inconsistency* should be solved by regulations (which are below the law in the legislative hierarchy). The Forest Code and Water Code are not necessarily contradictory, but rather complementing each other. Both *could* be applied simultaneously and the Forest Code does not prevent this.[4] If the interpretation of the situation is such that these regulations are contradictory, either or both of these laws should be amended by the Federal Assembly so that they are not conflicting anymore. An annulment of the regulation of the Water Code by means of a mere presidential directive or a governmental resolution would not be a constitutional way to change a *law*.

5.7.2. Habitat Protection in the Act on Environmental Protection

The *Act on Environmental Protection* ("*Ob okhranie okruzhaiushchei prirodnoi sredi*") demands *habitats of endangered species* to be protected. Article 65 prohibits all activities that might diminish the number or a habitat of a species mentioned in the Red Book of Russia. [The so-called Red Book includes lists of rare and endangered species. Some federal subjects have their own regional Red Books (The State Committee, 1997).] All land users must ensure that they take all necessary measures to protect these species. Paragraph 4 stipulates that the procedure to protect Red Book species is defined in *other* legislation. Does this other legislation mean the *Statute on Fauna* ("*O zhivotnom mire")*, the Forest Code, or something else? In the old forest act, the Principles of Forest Legislation, there were regulations on habitat protection, but these have been removed for the Forest Code (Zakharov, 1997). But even without more

[4] There is a similar situation in Finland. The Forest Act ensures protection for certain kinds of valuable forest habitats, and in addition there are similar protection rules for lakes and ponds in the Water Act and for some other kinds of habitats in the Nature Protection Act. All of them must be complied with in forestry operations.

specific regulations in the Forest Code, article 64, paragraphs 2 and 3, quite clearly prohibit the deterioration of the habitats of Red Book species.

Article 55.3 of the Forest Code could partly be seen as a means to define ways and procedures to protect endangered species. On the other hand, the Forest Code does not say that all such habitats *ought to* be protected, only that they *can* be protected. The importance of habitat protection in the Act on Environmental Protection decreases considerably if the Forest Code is the only law for implementing protection in forest habitats, or if the Forest Code does not acknowledge protection norms set down in other legislation. The Forest Code (article 1) stipulates that in other legislation all the forest law regulations must be in accordance with the Forest Code. Does this mean that no other nature protection, apart from the protection mentioned in the Forest Code, is accepted in forests? In the Forest Code there are no references to nature protection legislation.

Another problem related to habitat protection in the Forest Code is that environmental authorities have been excluded from the protection procedure.

The *Rules for sanitary cuttings*, prescribed by the Federal Forest Service of Russia in 1998, order that habitats of endangered species must be listed in the plan for sanitary cuttings. This is currently the only cutting regulation where habitats of endangered species have actually been taken into account (Kreidlin, 1998). But even in this regulation there is no obligation for forest authorities to cooperate or consult with environmental authorities, which probably are more aware of the habitats and are able to recognize rare species. *Leskhozy* can, of course, cooperate with local environmental authorities, and they probably should, in order to fulfill their task of listing and protecting the habitats.

5.8. Nature Reserves and National Parks

There are different categories of nature reserve areas and inside an area there can be different zones where human activities may be prohibited or limited.

The most strictly reserved areas are so-called *nature reserves* (*zapovedniki)*, where forest utilization is totally prohibited. There are 89 nature reserves in Russia, the total area of which is 29.5 million ha (1.7 percent of Russia's total area) (Myllynen, 1996). *Biosphere nature reserves* (part of the global network of biosphere areas) also belong to the category of *zapovedniki*, but they also include areas where human activities are allowed. Biosphere areas include strictly protected areas as well areas where the rational use of natural resources is allowed.

Another category, namely *national parks*, is a fairly recent phenomenon in Russia; the first national park was established in 1983 for conservation, recreation, scientific, educational and cultural purposes. National parks include special objects of nature, valuable for ecological, historical and esthetic reasons. In 1994, the national parks covered a total area of 6.4 million ha. The forests of a national park can be divided into different management areas; some with strict and some with less strict management restrictions. Mainly intermediate and sanitary felling are allowed in national parks (Myllynen, 1996).

Wildlife parks have been established to preserve and regenerate certain species and to restrict and rationalize the use of these species. Hunters' associations control a major part of wildlife parks. The total area is 56 million ha (3 percent of Russia's land area).

Natural monuments are rather small areas that need conservation for scientific, historical, educational and ecological reasons. The total area is 0.4 million ha.

Protected areas are situated rather unevenly in Russia: most of the parks are in the European part of the country. There are very few protected areas in the eastern part of Russia (Kopylova, 1999). It is, of course, understandable that in the most densely populated areas the need to establish protection areas has also been most urgent. But now, when the importance of Russian forests for global climate change and biodiversity protection has become more emphasized and Siberia's forests have become more attractive for foreign enterprises, there is clearly a need for extending the protection area net also to less populated areas.

In the *Act on Specially Protected Areas* there is, for the first time in Russian law, a possibility to set the area of a forthcoming protected area aside and prohibit economic activities on that territory (article 2 paragraph 5). Governmental authorities of a subject have the right to decide to put an area aside and establish restrictions on the area. Problems might arise from the fact that the Forest Code does not recognize this kind of "pre-protection" (Stepanitskii, 1997).

This right has already been used, for example, in the Republic of Karelia. In August 1997, the head of the Government of Karelia issued a directive on the reservation of an area for the national park "Kalevalskii". With that directive 114,800 ha of forest was set aside until the definite borders of the national park could be defined. In that area, final felling, construction of main roads and other economic activities are prohibited. It seems that local *leskhozy* started to respect this directive or at least their annual cuttings decreased in the forests belonging to the three *leskhozy* that cover the area of "Kalevalskii" park (Stepanitskii, 1997). Before this directive there was still some logging in the area in the spring of 1997, even if the preliminary plans to establish the park were quite well-known in the region and Kostamuksha town had already approved the plans to protect 100,000 ha of forests. The Finnish company that was logging in the "Kalevalskii" park stopped logging only when the President of Karelia interfered in the matter. The federal forest committee (GOSKOMLES) had given the logging permit, which indicates that there is a certain tension between nature protection and forest authorities (Nature League, 1998).

5.9. Compensation for Protection

Article 36 of the Constitution prescribes that the possession, use and management of land and natural resources may not cause damage to the environment. Environmental considerations could thus clash with the right of ownership or use, especially as article 59 of the Constitution makes it a duty for everyone to preserve nature and the environment and to care for natural wealth. The clash might occur not just between the ownership and environment, but also between all kinds of land use and management and the environment. Article 59 applies both to the forest owner (the state) and the users and managers (*leskhozy*, forest enterprises, etc.) of the forests.

In many countries the unwillingness of landowners to protect their land and the expenses of land purchase cause difficulties to protect large forest areas. If the

landowner does not want to have a protected area on his land, he is usually entitled to compensation for his losses. Russia has now a good chance to establish a net of protection areas as long as the forests belong entirely to the federal state.

However, we can not forget the rights of leaseholders and other forest users. A lessee might have a contract to rent a forest tract for as long as 49 years and has planned its future operations according to that contract. Losing a large part of the leased forest parcel might cause severe difficulties for a lessee. Grounds for terminating a leaseholder's rights of use of a forest parcel are written in the Forest Code (article 28) and in the *Regulations for Leasing Forest Fund Parcels* (articles 36 and 41). According to the Forest Code, compulsory termination of a contract is possible, for example, if a forest is withdrawn to meet the needs of the state. Establishment of a nature reserve assumably belongs to this category.

The forest user shall be compensated when a forest parcel is removed "for the State and other purposes". In these cases the forest user shall be compensated in full for damage that resulted from this removal (article 84 of the Forest Code). It is difficult to say what "full compensation" means in this context.

In cases when the conditions of forest use substantially deteriorate (Regulations for leasing… article 31) the leaseholder is entitled to compensation. The lessee has a right either to replacement of the forest parcel or a reduction of the lease charge. This article is likely to refer to natural disasters, etc., that would significantly reduce the commercial value of the forest.

Forest management units, *leskhoz*y, are also entitled to compensation for forest management losses and damages (FC, article 85). Bogoliubov (1997) maintains that article 85 refers to "legal" losses and damages: transferring a forest tract to non-forest land for other purposes than forestry (e.g., building houses, factories). Article 111 of the Forest Code states, that citizens and juridical persons are obliged to compensate for damage inflicted to forests, i.e., article 111 covers 'illegal' cases of damage and losses.

The above-mentioned interpretation of article 85 would mean that *leskhozy* could receive compensation for "losing" a tract of forest when a nature reserve or the like is established. There could thus be two parties receiving compensation if a protection area is established on forestland. The interesting question is why would a *leskhoz* need to be compensated for "losses and damages" in such cases? Local enterprises are more likely to face problems if a majority of their neighboring forests are protected. *Leskhozy*, on the other hand, are not commercial enterprises performing commercial logging. Their tasks are mainly silvicultural and forest protection measures and organizing forest auctions and leasing (Kopylova, 1999). For them, establishing a national park would, of course, mean that it would lose its part of forest taxes and rental charges. The minimum stumpage fee, determined by the federal government, goes to the federal (60 percent) and the regional budget (40 percent). The rest of the payment (above the stumpage fee) for use of the forest goes directly to the *leskhozy* (article 106 of the Forest Code).

5.10. Concluding Remarks about the Forest Legislation

The Russian Forest Code is quite new. The Code does not seem to take other previous laws into account. There is no mention that also other laws, like the *Law on Environmental Protection* or the *Water Code*, should be taken into consideration in logging and forest management. Due to this and some provisions of the Forest Code,

there are contradictions between the Forest Code and some federal laws that aim at nature protection. There are, however, also positive signs. New rules for sanitary cutting are a step towards better recognition of natural values. These rules are also the first cutting regulations that both NGOs and nature protection authorities could take part in formulating (Kreidlin, 1998). The question on compensations is interesting and also very important since Russia is still planning to establish many new reserve areas and someone might want to be compensated for their economic losses.[5]

6. Conclusions

Changes in legislation have been an essential element in the ongoing change of the entire political system in Russia. This also applies to changes in the forest sector: it has been necessary to amend laws concerning forest use, economic activities, etc. The forest sector, however, does not seem to have gained from recent political, economic and legislative changes. On the contrary, production has declined and many companies are on the verge of bankruptcy and do not make any investments in future production. What is the role of legislation in all this?

We have gone through different fields of legislation concerning the forest sector. First, more general ones, dealing with Russian federalism and legislative powers in Russia. These issues affect every field and level of Russian society, including the forest sector. Second, issues that regulate the working environment of enterprises on a general level, in relation to the state: land/forest ownership, taxation and bankruptcy legislation. Thirdly, relations between forest enterprises: what kind of business practices are there and how do they reflect the current legislation, payments, contracts, dispute settlement? Fourth, environmental issues: how does the current legislation secure nature protection in forests?

The unstable situation in Russia affects everything in society, including legislation and the forest sector. The difficult federal administrative and legislative relationships (e.g., center-subject and President-Duma) make it more difficult both to lay down new laws and to implement laws and other regulations on the regional level. The legislative body has been paralyzed by disputes between different parties. Different authorities are not cooperating but fighting for more power. The new law "The principles of dividing power…" is, however, a step in the right direction. It shows that the legislator has admitted that such problems exist. The implementation of the law will then show the real will to make changes in the current practices of secret agreements, etc.

Some questions, like the ownership of forests, are still unsettled, but since there are many other issues that need to be solved before changes can be made in the structure of ownership nothing will happen with the forest property rights issues for a while yet, although such changes might have tremendous social, environmental and economic impacts. The Constitutional Court has now put an end to speculations concerning the ownership of forests. Privatization, etc., should therefore be carefully considered when the overall situation in Russia has stabilized. This does not mean that the current regulations on leasing, for example, could not be improved.

[5] Information about the compensation practices (level of compensation, who really is compensated, etc.) in Russia was not available for the author while writing this report and the question is thus left partly unanswered.

Law in commercial transactions does not seem to be very important in Russia. Russian enterprises do not really use the full potential for action that legislation gives them. Maybe legislation is not perfect, but there are mainly other reasons why Russian enterprises do not use it. Some of the practical reasons are the lack of money, the prevalent breaches of contract and tax evasion which all lead to the use of barter and prepayments, a lack of written contracts and to solving disputes outside the *Arbitrazh* courts. More "psychological" reasons are the low credibility of laws and courts, (dating from the Soviet time), the lack of knowledge of laws (due to lack of interest and quickly changing laws and regulations) and also the fact that many old managers resist all changes that might diminish their own power in the enterprise. One way to reduce the practical problems could be to emphasize the efficiency and accessibility of the *Arbitrazh* courts. The credibility and good enforcement of court decisions could help assure enterprise managers that modern and legal ways of business management pay off. Psychological or moral difficulties relate to the whole society. Russian leaders have not been able to convince the people that they are trustworthy and that they are working for Russia (rather than the other way round). This diminishes the credibility and attractiveness of the whole legal system. Legislation could, of course, force the decision-making and administration to become more transparent and democratic, but this problem can not be solved solely by means of legislation. It is more a question of the morals and values of a society.

In solving the large tax evasion, the Russian Federation has used the wrong method. Higher and more numerous taxes and penalties have been introduced in order to collect more taxes; but since people do not trust the authorities and the taxation system, it has not worked. One of the problems could also be the very vague connections between the federal and regional authorities. Regional authorities might not feel greatly enthusiastic to collect federal taxes. The tax system has recently been simplified through the enacting of the new Tax Code, which diminishes the allowed number of taxes and will hopefully also change the unreasonable and unpredictable nature of Russian taxation.

The insufficiencies of nature protection are also partly due to legislation. To some extent they are also a result of the difficult general economic situation. However, the economic decline in Russia has, in a way, been a blessing for the forests of the country, since it made harvests decline, but negative effects might come when the economy slowly recovers. It is important that a nature protection regime functions in forest legislation. Current deficits in the control of forest legislation mainly result from the economic crisis; the *leskhozy* simply do not have enough funds to conduct all of the necessary surveillance of the forests. But there are also shortages in the legislation. The supremacy of the Forest Code, for example, causes problems in nature protection, since it seems that some other laws that *add* something to nature protection are considered to be in contradiction with the Forest Code. It should be clearly stated what kinds of other regulations should be followed in harvesting and management operations in forests.

The fact that Russian forests still belong to the Russian Federation provide a good chance to make the network of nature protection areas more comprehensive. It will be more difficult and expensive if the forests one-day will be privatized. Also long-term leasing contracts may hinder the realization of protection plans, if the compensation level becomes high. Russia has long traditions in establishing and managing *zapovedniki* and other protection areas, so there is no specific need to change legislation on protection areas. It is more likely that the surveillance of that legislation is in danger

and the reason once again is the lack of money. Especially illegal hunting, but also wood harvesting, is a problem in protection areas (Kotov and Nikitina, 1993).

The decision of the Supreme Court to convert forestland into non-forest land is an excellent example of a victory of environmental legislation and the democratization of society. The decision shows to Russians and the government that environmental legislation must be taken seriously and that the government can not make exemptions from obeying the law. This decision will hopefully encourage Russians to also bring other cases to court where authorities or enterprises have violated the nature protection legislation. This is an important step, since in the Soviet Union the constitution and environmental laws were merely words without much meaning and there was no way to make the authorities responsible for breaking environmental laws.

The fact that Russian authorities on every level are often corrupt is, of course, a huge problem that has not been discussed in this report. If it is easier to bribe, or just otherwise use old connections between enterprises and authorities, why would an enterprise be interested in following the environmental legislation or in using modern business methods that the new legislation offers.

In discussing these different fields of legislation several common problems can be noticed, such as:

- **implementation problems** (new laws are enacted but hardly implemented, e.g., bankruptcies);
- **contradicting regulations** (on every level of the hierarchy of laws, and the state-subject level as well);
- **harmful laws and practices** (hindering the transition towards democracy and market economy, e.g., secret agreements and decrees and *ad hoc* tax exemptions);
- **flood of laws** (makes it difficult to follow the pace of changes and undermines the credibility of the legislation if it is not implemented).

And several institutional shortcomings can be seen to be the causes of these problems:

- **federal state – region problems** (conflicts of interests, struggle for more power, unclear division of powers);
- **hierarchy of regulations** (lower level authorities do not respect the legislative acts of higher levels; e.g., tax legislation);
- **the general lack of trust in the society** (Soviet legacy, Russian authoritarian leaders, corruption, crime);
- **enforcement problems** (due to this legislation, courts have not got enough influence on the transition);
- **lack of knowledge of the law** (many changes at a rapid pace, lack of interest, practical reasons to resort to other means);
- **lack of transparency** (e.g., hidden efforts to favor former state enterprises, secret agreements and other practices that weaken the developing democracy); and
- **unclear laws and regulations** (laws do not clearly state their relation to other laws or do not provide sufficient tools for their implementation).

The whole situation in a huge country with such an extraordinary history as Russia, is so complex that there are certainly no easy or quick solutions. The problems of the forest sector are also the problems of Russian society in general. It is definitely vital to slowly build trust between the people and their politicians and among people themselves, as wells as to build confidence in the legal system. It is evident that it is not enough just to make new laws in the old top-down fashion. If the Russians still think, like many probably did during Soviet times, that most of the laws are just given from above to control and suppress people, it is obvious that they do not feel any moral obligation to obey them. But all this depends, of course, on the Russians themselves. The politicians and the people must feel ready to take these steps toward democracy and a market economy, or try to create something of their own, and not just copy western systems that often will not work in Russia.

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