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Green Salvation



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From the Editor

**GREEN
SALVATION
HERALD**

FOREWORD

By Glenn Kempf

The *Green Salvation Herald* is the annual English-language digest and supplement to the *Bulletin of Green Salvation*, the ongoing Russian-language publication of the Ecological Society Green Salvation. As in previous issues of the *Herald*, many of the articles found in this issue were published previously in the *Bulletin*, while others appear here for the first time.

In accordance with Green Salvation's mission, the *Herald* is devoted to describing Kazakhstan's most urgent environmental problems, as well as presenting suggestions for their resolution. Within the pages of the *Herald*, readers will find active discussion of a wide range of issues, from the hunting of endangered species to the role of transnational corporations, the importing of nuclear waste, and the fate of Kazakhstan's potential World Heritage Sites. Special attention is devoted to questions of environmental law and international agreements such as the Aarhus Convention and the World Heritage Convention – in other words, the extent to which Kazakhstan's authorities observe their own rules and obligations.

The first section of the 2001 *Herald*, "The General Social-Ecological Situation," provides a broad overview of the state of the environment and state environmental policy in Kazakhstan. The opening Article, by Sergei Kuratov, Semen Svitelman and Sergey Solyanik of Green Salvation, covers a wide range of issues, including environmental legislation, human rights, and the role played by government agencies, transnational corporations (TNCs), and non-governmental organizations (NGOs). The second Article, "Time Does Not Wait" by Nataliya Medvedeva, addresses the implementation of the UN's World Heritage Convention in Kazakhstan and the protection of the country's potential World Heritage Sites, including Ile-Alatau National Park, the Naurzum nature preserve, and the architectural complex of ancient Turkestan.

In the second section, "Economic Mechanisms for Nature Protection," Marjukka Hiltunen's Article "Money for Nothing...?" focuses on the system

of environmental fees and state financing in Kazakhstan. Hiltunen's analysis shows that despite legislation requiring that money collected from environmental payments go toward alleviating the country's environmental problems, the majority of such funds are spent for entirely different purposes.

The articles in the third section deal with various aspects of environmental law, both internationally and within Kazakhstan. The first, by Valery Krylov and Sergei Kuratov, returns to the topic of the World Heritage Convention from a legislative perspective, focusing in particular on the troubled status of Ile-Alatau National Park. "The Reality of Trophy Hunting in Kazakhstan," by Nadir Mamilov, discusses a quite different danger – the threat to endangered bird and animal species as a result of decrees permitting their hunting by foreigners. Another Article by Sergei Kuratov, "Human Rights and Radioactive Waste," highlights the dangers of a proposal to import nuclear waste from foreign countries for disposal in Kazakhstan, and reveals the dangers presented by the government's attitude toward environmental protection and frequent shifts in policy.

The issue's final section examines the problems of the Caspian Sea and the surrounding region. It opens with a new Article, "Kazakhstan's Oil," in which Richard Steiner, a professor at the University of Alaska in the United States, draws parallels between the exploitation of oil resources in Kazakhstan and Alaska, and shows how the latter's economic policies, use of oil revenues, and citizen participation can serve as a model for Kazakhstan – as well as indicating what mistakes to avoid. Sergei Kuratov highlights the role of TNCs in Kazakhstan today and the public's need to demand transparency and accountability from them.

An interview with oil and gas expert Murat Mailibayev continues the theme of the previous articles, providing a detailed look at the operations of foreign oil companies in Kazakhstan, while the final Article, written by Neil Tangri, field director for the organization Essential Action, discusses the Western concept of the "stakeholder" and summarizes the results of a seminar for TNC and NGO representatives in Almaty, in which all participants were stakeholders in the "big picture" of Kazakhstan's future.

Despite the wide range of topics covered by the *Herald*, the fundamental message is the same: Kazakhstan's environmental and human rights issues can be dealt with only by dealing with the underlying system and addressing the roots of the problem – above all, the need for a true environmental policy and a solid, well-enforced legal base for protecting the environment and the nation's population. The *Herald* invites the reader to consider the potential fate of the environment in Kazakhstan and beyond, as well as the measures needed to avoid such a fate and make true sustainable development possible.



The Ecological Society
Green Salvation



Green Salvation (GS) is a non-governmental, public organization, established in 1990 and registered as an Almaty city organization. Green Salvation's goal is to improve socio-ecological conditions.

Since 1993, the organization has belonged to the Association "Environmental Education." Since 1995, GS has been a member of The World Conservation Union (IUCN). GS members include people with a varied set of skills: historians, art critics, engineers, etc. Membership in the organization is based on personal initiative and participation in specific projects. Green Salvation's members combine their organizational-related work with their professional activities. The activities of Green Salvation are guided by the following principles:

- asserting the universality, indivisibility and interdependence of all human rights;
- ensuring the rights of individuals in contemporary society and of future generations to a healthy and fruitful life in harmony with nature;
- fulfilling the need for general environmental education and awareness;
- enhancing cooperation among governmental bodies, private entities and non-governmental organizations to resolve environmental problems.

The main areas of Green Salvation's activities include:

1. Participation in the development of legislation for environmental protection in the Republic of Kazakhstan. The organization has participated in official discussions on the law "On Environmental Protection in the Kazakh SSR" (1991) and on the laws of the Republic of Kazakhstan entitled "On Environmental Protection" (1997), "On Environmental Impact Assessment" (1997), "On Specially Protected Natural Territories" (1997), "On Radiation Safety for the Population" (1998), and the law "On Land" (2001).

2. The spread of environmental knowledge and information for sustainable development. Since 1992, Green Salvation has held seminars on humanitarian-ecological themes twice a month. Since 1995, the organization has published the officially registered *Bulletin of Green Salvation*. The bulletin focuses on issues such as sustainable development, environmental education, environmental legislation, and the administration

of specially protected natural territories, as well as other social and environmental problems.

3. Promotion of environmental education and the inclusion of environmental perspectives in thinking about current social and economic issues and culture. GS devised a special course “Concept of Sustainable Development,” for students of higher educational institutions. This information was published as a textbook in 1997. A history course, “The Interconnection between Society and Nature,” was developed for schoolchildren. Informational and consulting support is provided to schoolchildren, students, teachers and lecturers of higher educational institutions. Since 1996, an annual summer environmental camp has been held in the mountains of Ile-Alatau National Park.

4. Environmental action. Green Salvation is collaborating with the Ile-Alatau National Park administration in an effort to include the park on the list of World Heritage Sites. Work is being done to close and liquidate an illegal solid waste dump and reduce the level of pollution in the Ainabulak and Dorozhnik neighborhoods.

5. Collection and dissemination of information about the environmental situation in the Republic of Kazakhstan. Green Salvation has gathered documents and reference materials on a wide spectrum of environmental problems, which is stored in an electronic database and a library.

Green Salvation cooperates with the International Socio-Ecological Union (SEU), the International Society for Ecological Economics (ISEE), and a number of environmental NGOs in Kazakhstan, Central Asia, and Russia, as well as other countries. GS collaborates with subdivisions of the Ministry of Environment, other governmental structures and officials at all governmental levels.

The Ecological Society Green Salvation is ready to collaborate on efforts within the aforementioned areas.

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FACTORS DETERMINING ENVIRONMENTAL CONDITIONS IN THE REPUBLIC OF KAZAKHSTAN IN 2000-2001

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Environmental issues remain highly problematic in Kazakhstan. The right of human beings to a healthy environment continues to be regularly violated, and the right of access to natural resources is not observed. It remains difficult to obtain access to environmental information, to take legal recourse and to participate in environmental decision-making. Pollution exerts a negative influence on the health of hundreds of thousands of Kazakhstanis. Environmental conditions for the development of a number of economic activities continue to worsen. Destruction of the environment remains one of the main causes of poverty in the country. In this Article, the authors look at some of the trends and causes that have contributed to the development of the current situation in Kazakhstan.

HUMAN RIGHTS: The current Constitution of the Republic of Kazakhstan (ratified in 1997) states that “rights and freedoms are recognized and guaranteed in accordance with the Constitution” (Article 12, point 1). Such rights and freedoms should be recognized and guaranteed in accordance with the generally acknowledged principles and norms of international law, as well as the nation’s constitution. However, as of October 15, 2001, Kazakhstan had not signed either the International Pact on Economic, Social and Cultural Rights or the International Pact on Human and Political Rights. An Article on the legal status of “international legal documents on human and civil rights and freedoms,” present in the old 1993 Constitution (Article 3), was removed from the 1997 version. Fault for the emission of recognition of international conventions and pacts on

human rights lies largely with the country's governing elite, to whom human rights remain empty words, which is perfectly understandable if one keeps in mind the "communist" and "Komsomol" (Communist Youth League) past of Kazakhstan's enormous army of government bureaucrats.

For the ruling elite, environmental rights are all the more empty words. Article 26 of the 1993 Constitution, which recognized the right of citizens "to an environment conducive for life and health," was removed from the 1997 version. If Parliament had not managed to retain a statement on the right to a healthy environment in the law "On Environmental Protection," mention of environmental rights would be completely absent from current Kazakhstani legislation. (Whether the law "On Environmental Protection" should, in fact, retain mention of the right to a healthy environment was hotly debated during discussion on amendments to the law presented to Parliament in May 1997).

In signing the European Security Charter and the Declaration of the OSCE Istanbul Summit (November 19, 1999), our country's leadership took upon itself the obligation "to support democracy, the supremacy of the law, and respect for human rights." Unfortunately, however, the Kazakhstani government has not hurried to implement these obligations.

Violation of the right of access to natural resources paves the way for the rise of poverty in Kazakhstan. To date, the population has not seen any real benefit from the extraction of oil or the privatization of formerly state-owned resources. The authors of a draft plan on an environmental strategy (funded by the World Bank) note that in the region of Central Europe and Central Asia, "the initial level [of poverty]... was not high... [but has]... swiftly increased in the last 10 years... during the period from 1987 to 1998 the number of impoverished [in this region] has increased fivefold" (*Draft of an Environmental Strategy...*, p. 35).

ENVIRONMENTAL POLICY. In Kazakhstan, frequent violations of the right to a healthy environment are to a large degree the result of the economic policy pursued by the country's leadership. This policy is aimed at maximizing natural resource extraction, and is possible due to the lack of a coherent environmental policy in the country. Despite the government's many attempts to develop systematic policies to promote rational resource use and environmental protection, these policies remain inconsistent, uncoordinated, and at times contradictory.

To date, no official strategy for sustainable development has been developed or ratified in Kazakhstan. The National Council for Sustainable Development, which was established as part of the President's administration in 1997, has not yet begun to operate. Efforts to develop a

sustainable development strategy on the local level, such as the program for the sustainable development of the Ili-Balkhash basin, can hardly lead to any real positive results. The National Environmental Center believes that Kazakhstan lacks the necessary preconditions to promote sustainable development, and that the country's leadership fails to understand the basic concept of sustainable development itself (www.neapsd.kz).

THE NATIONAL ENVIRONMENTAL ACTION PLAN (NEAP). It is extremely doubtful that the projects outlined in NEAP will be implemented. The government does not see NEAP as outlining mandatory legislative actions, but rather as a document without legal status (reply by the Ministry of Justice, August 19, 2000, No. 4-01-10-23/5522/i to an inquiry by the Ecological Society Green Salvation). This explains why the NEAP projects are financed primarily by loans and grants from foreign countries (www.neapsd.kz).

In the summer of 2001 the World Bank adopted a new environmental strategy, in which the necessity of continuing the development of National Environmental Action Plans in the nations of Central Europe and Central Asia is discussed. Therefore, we can expect that Kazakhstan's NEAP will be fully developed with the World Bank's support, despite the fact that it has unclear legal status in Kazakhstan.

INTERNATIONAL CONVENTIONS. Kazakhstan's record of observance of international conventions on environmental protection is a cause for concern, even though, according to the Constitution, they, like other ratified international agreements, take priority over Kazakhstani law (Article 4, point 3).

Kazakhstan has been a signatory to the World Heritage Convention since 1994. However, to date not a single natural or cultural site in Kazakhstan been included on the World Heritage List; as of October 2001, not one had even been nominated. At the same time, significant destruction of natural sites and cultural monuments of global significance (such as Tamgaly Gorge and Ile-Alatau National Park) continues.

The situation with other international environmental conventions is similar. In the spring of 2000, Kazakhstan ratified the Convention on International Trade in Endangered Species (CITES), but in September of the same year the government permitted the capture of Saker falcons and the hunting of great bustards (Decree No. 1414a, September 20, 2000), in violation of Kazakhstani legislation (Reply by the Ministry of Natural Resources and Environmental Protection, March 3, 2001, No. 09-550 to an inquiry by the Ecological Society Green Salvation). Both species of birds are included in the Red Book of Kazakhstan (a book of endangered

species). An analogous decree (No. 1173) was also issued on September 11, 2001!

The Aarhus Convention (ratified by Kazakhstan on October 23, 2000), which promotes access to information, public participation in decision-making and access to legal recourse on questions concerning the environment, has been consistently violated. For example, Almaty city authorities have routinely ignored the protests of city residents to the construction of gas stations in various residential parts of the city, in violation of existing legislation. This confirms, once again, the absence of mechanisms for public participation in environmental decision making.

The initiative groups formed by members of Parliament provide another example of violation of the Aarhus Convention. These groups have proposed introducing amendments to existing legislation to allow for the import and storage of radioactive waste from other countries to Kazakhstan. At the conference “The Import and Storage of Radioactive Waste in the Republic of Kazakhstan: A Dialogue Between the Government and Civil Society,” (organized by the OSCE, the Kazatomprom company, and the NGO Tabigat Ecological Union on October 19-20, 2001), the overwhelming majority of NGOs spoke out against such plans. Thanks to the efforts of the OSCE, the right of the public to express its opinion on this critical issue was acknowledged. However, how and whether the government will take into account public opinion in the future remains undetermined, in light of the lack, at present, of any mechanisms for implementing the Aarhus Convention in Kazakhstan.

LAWMAKING. A change in the legislative function of Parliament is noticeable. More and more, the Parliament in Kazakhstan seems to simply register laws, without careful discussion of their content.

An analysis of the draft laws presented for discussion by Parliament over the last two years shows that in the sphere of environmental policy, the following tendencies are noticeable: an extreme shift in power from central to local governments; overlapping authority and property rights in various branches of government; weakening of responsibility and sentencing for violations of environmental law; and dismantling of existing economic mechanisms that promote the rational use of natural resources and environmental protection under the pressure of immediate economic demands.

For instance, in the 2001 law “On Land,” “state administrative organs” (Article 16, point 2), especially local ones, received the right to uncontrolled and unilateral disposal of land – the country’s primary natural resource, which guarantees its sovereignty and the well-being of its people as a whole.

Such tendencies have created serious obstacles to Kazakhstan's fulfillment of international conventions on environmental protection, and undermined the foundations of the country's environmental security.

Violation of the provisions of the laws "On Environmental Impact Assessment" (Articles 5 and 6) and "On Normative Legal Acts" (Article 21) has become routine in discussion of draft laws in Parliament. Environmental analysis of the potential impacts of new bills being introduced into Parliament is often not carried out (reply by the Ministry of Justice No. 3-02/19-9300 on December 5, 2000, to an inquiry by the Ecological Society Green Salvation), although this is required under law. For example, the laws "On Land" and "On Tourist Activities in the Republic of Kazakhstan" "were not subjected to state environmental expertise and not examined" (reply by the Ministry of Natural Resources and Environmental Protection No. 09-2511 on September 17, 2001, to an inquiry by Green Salvation). The quality of the state environmental expertise that is conducted is also a cause for concern.

Transnational corporations (TNCs) operating in Kazakhstan have begun to exert a noticeable influence on the lawmaking process. At a roundtable meeting between representatives of NGOs and TNCs at the international seminar "Developing Principles for Mutual Relationship Between Non-Governmental Organizations and Transnational Corporations in the Caspian Region" (Almaty, September 10-12, 2000), corporate representatives openly admitted that TNCs influence lawmaking. In doing so, they attempted to persuade the public that this is done with the aim of improving legislation. For instance, there is reason to believe that the decision to conduct "prospecting and extraction of hydrocarbon resources" in the protected area of the northern Caspian (see the law "On Specially Protected Natural Territories," Article 48, point 2) was granted under pressure by TNCs. In May 2000, amendments to this law were proposed that would have removed Article 48 altogether (Draft Law..., p. 6). This is most likely explained by the fact that the "special environmental requirements" stipulated in that Article clearly hinder the extraction of oil.

Another example is the development of the law "On Protection of the Atmosphere." The draft version of the law was sent to a number of TNCs: AES, OKIOC, Tengizchevroil, and ExxonMobil, as well as to government ministries and state agencies. There are plans to revise the bill, taking into account the comments and suggestions of TNCs.

The government's desire to adopt "inexpensive" laws continues to exert a significant influence on the process of legislative development. For example, an explanatory note included on the law "On Protection of the

Atmosphere” states that “the current draft does not stipulate additional expenditures from the state budget, and does not require an increase in the staff of state administrative bodies.”

The Parliament’s Committee on Questions of Ecology and Natural Resource Use could play a significant role in the lawmaking process. However, the committee’s members have effectively removed themselves from the discussion of a number of the most important draft laws on environmental problems, such as the laws on land and on the development of economic mechanisms to promote rational use of natural resources. The committee, like Parliament itself, lacks any representatives of “green” organizations: however, random individuals frequently appear there who are only vaguely acquainted with environmental problems. It should be noted that the committee has tended recently toward greater cooperation with “green” organizations. In doing so, however, it must not be forgotten that Parliament, to date, has not developed a clear procedure for working with the public.

A weak point in the lawmaking process lies in the fact that the members of Parliament are not bound by any “imperative mandate.” “The concept of an imperative mandate includes the obligation, established by law, for deputies to fulfill their constituency’s demands, and periodically report on their activities to voters, as well as the option to recall any deputy who has not proven worthy of the voters’ trust” (Resolution of the Constitutional Council No. 12/2, May 23, 1997). Lack of such an imperative mandate means that voters cannot exert significant influence on their deputies, nor on the lawmaking process.

MNREP (Ministry of Natural Resources and Environmental Protection). In 2001, amendments to the law “On Environmental Protection” were adopted concerning the Ministry’s functions. From that moment, the MNREP ceased to be an organ for regulating the actions of other government agencies in the sphere of natural resource use (amendment to Article 8). As a result of these changes, the system of unified state control over environmental protection and natural resource use was also changed. These functions were effectively placed in the hands of the individual agencies.

The amendments introduced legalized the inclusion of a number of other central executive organs for environmental protection and administration of natural resource use within the structure of the MNREP. The latter were integrated into the Ministry in 1999, in violation of existing legislation. This has led to a change in the MNREP’s functions, placing it on a level equal to that of the economic ministries and agencies.

This situation is further exacerbated by the fact that “frequent reorganizations” (the last of which took place in December 2000) within government ministries and the turnover of personnel connected to them has “led to the violation of the principle of responsibility for decisions that have been made” (www.neapsd.kz).

Evidently, our country’s leadership has no need for a ministry able to effectively defend the environment; it needs only the illusion that nature is being protected, and that the republic’s international obligations are being observed.

OBSERVANCE OF THE LAW. Compliance with the law in our republic leaves much to be desired. It is precisely for this reason that environmental violations have become so frequent and massive in scale, as testified by official statistics. Typical violations, in addition to minor ones, include the following: refusal to have environmental impact assessments conducted for projects affecting the environment and the population’s health; state executive bodies exceeding their authority and appropriating the authority of environmental agencies; the acquisition of economic functions by environmental protection agencies, and the latter’s inaction and failure to fulfill their required functions.

Especially alarming are the violations of environmental legislation at virtually all levels of power, from the President (the President’s Decree No. 235, signed on Oct. 13, 1999, contradicts the 1997 law “On Environmental Protection”), to lower executive bodies. “Local executive bodies, particularly akims (mayors) at various levels, fairly frequently issue illegal decrees. The public prosecutor’s office noted and changed 25,544 such decrees in 2000” (Address by the Constitutional Council..., p. 5).

At a joint collegium of the Ministry of Justice and the General Prosecutor’s office, General Prosecutor Yurii Khitrin revealed the results of a joint check of normative legal acts published by fourteen ministries and government agencies. Many of these documents have no legal force, since they were not registered with the Ministry of Justice, or were not signed not by the heads of the respective agencies, but by their deputies or others. The General Prosecutor’s office has significant complaints concerning the leadership of the Agency for Public Health and the Ministry of Science and Education, for example. The ministries of energy, industry and trade, state revenues, foreign affairs, labor and social welfare, and natural resources and environmental protection have also “distinguished themselves” (*Kazpress*, Nov. 16, 2000).

Often, in order to give a legal character to illegal actions, amendments to laws are proposed in Parliament after the fact. This, in fact, has become

one of the main drivers behind “frequent and unjustified introduction of amendments” (Address by the Constitutional Council..., p. 9) to laws, even to those passed only recently.

For example, as a result of amendments to the law “On Environmental Protection,” the Fund for Protection of Nature was abolished (June 2001). Before the amendments’ passage, the money in the fund – fees from natural resource users in the form of payment for pollution, settlements obtained from lawsuits for environmental damage, fines paid for violation of environmental legislation, and so forth – was spent on nature protection (although in violation of existing legislation, it was often used for other purposes). Instead of enforcing the existing law, the government chose to transfer the aforementioned funds to the state budget, thereby creating a severe shortage of finances for environmental protection

Government structures have become increasingly helpless. One glaring example is the position of the MNREP on the development of the Medeu Park, which has been created in flagrant violation of the law and threatens the integrity of Ile-Alatau National Park. The Ministry acknowledges the folly of the park’s creation (Reply of the MNREP No. 03-05-10/507, February 23, 2001, to an inquiry by Green Salvation), but has taken no actions to halt the city government’s illegal activities, not wishing to come into conflict with them.

The high level of corruption in Kazakhstan is yet another factor which encourages lawbreaking, pollution, and environmental destruction. The relationship between the state of the environment and corruption was discussed at the Davos Economic Summit by Peter Aigen, a representative of Transparency International (*Panorama*, Feb. 9, 2001). Addressing the forum, he declared, “Corruption and pollution of the environment go hand in hand.” Transparency International has published a list of countries, ranked according to an “index of perception of corruption.” The three top places on the list were occupied by nations having a minimal level of corruption: Finland, Denmark, and New Zealand. Out of a total of 91 countries listed, Kazakhstan shared 71st place with India, Honduras, and Uzbekistan, (“Transparency Kazakhstan Presents...”, p. 7).

FOREIGN AID. Foreign aid to Kazakhstan can be characterized by the well-known words of David Korten: “The prevailing forms of foreign aid and investment policy mask the reality that the poverty of the South is not a consequence of inadequate inflows from the North. It is the result of an unbalanced system of international economic relations, which allow the North to take possession of a significant portion of the share of world environmental resources belonging to the South, with the aim of supporting its own extravagant lifestyle” (Korten, p. 11).

Foreign governments, companies, and organizations should establish clear links between the observance of human rights and the forms of assistance offered to countries with transitional economies. In other words, the philosophy of foreign aid must become more solidly grounded, and more understandable to the population as a whole. Provision of aid should be monitored by Parliament and the public.

At the present time, foreign assistance has been largely ineffective in solving Kazakhstan's environmental and socioeconomic problems. A significant portion of the funds allocated by donor nations and international financial institutions has been spent on scientific research, analytical reports, the organization of numerous meetings, payments to foreign consultants and local support staff and so on. The result of this kind of assistance, more often than not, has consisted more of the development of general recommendations, programs, and concepts, than in concrete help to solve environmental problems. One graphic example is the agreement signed by the Ministry of Economics and Trade, the UNDP, the Asian Development Bank, and the World Bank for providing technical assistance in the war on poverty. Kazakhstani authorities intend to develop a medium-range program for combating poverty and unemployment in 2003-2007 using funds from these international organizations (*Panorama*, Jan. 6, 2001).

The coordination of the activities of donor countries and international financial organizations also leaves much to be desired. The various aid programs are poorly connected to one another, which also lowers the effectiveness of foreign assistance.

NATURAL RESOURCE USERS. Transnational corporations (TNCs) have become major natural resource users in Kazakhstan. Some fifteen to twenty companies, operating in the fields of oil and gas, mining and metallurgy constitute the major foreign investors (*Panorama*, April 28, 2000). Kazakhstan's leadership has staked its hopes for carrying out plans to increase extraction of raw materials on them. The fatal nature of such tactics is obvious: the development of other branches of the economy has slowed to a crawl. TNCs behave like virtual monopolies, without devoting attention to environmental protection or rational use of natural resources. Even the World Bank expressed concern regarding irrational natural resource use in Kazakhstan (*Panorama*, June 16, 2000).

The degree of TNCs' impact on the environment is difficult to evaluate, due to the near-total collapse of Kazakhstan's system of environmental monitoring. As an example, we will present two different opinions. According to data from the NGO Kaspii Tabighaty (Caspian Nature), in the first half of 2000 the Tengizchevroil corporation had already exceeded

norms for atmospheric emissions by 200 percent (*Ekspress K*, June 15, 2000). According to an announcement by the company's management, on the other hand, Tengizchevroil reduced its atmospheric emissions by 30% in 1999, thanks to a project modernizing and reconstructing the company's equipment (*Panorama*, Feb. 18, 2000).

The practice of organizing environmental monitoring in which "work is financed primarily through agreements with major local enterprises and natural resource users" has become widespread (*Environmental Information Bulletin...*, p. 22). For instance, Tengizchevroil and the Karachaganak Petroleum Operating Company finance private environmental monitoring, in violation of Kazakhstani law (Verdict of the Atyrau City Court, October 31, 2000; *Panorama*, Dec. 15, 2000). Circumstances of this kind force one to doubt the objectivity of such monitoring.

The conclusions of a special commission studying the circumstances and causes of numerous deaths at installations owned by Tengizchevroil over the last several years also provide evidence of legal violations. The commission revealed the company's failure to obey labor laws and concluded that it was necessary both to immediately resettle the inhabitants of the village of Sarykamys and to study more fully the factors influencing the deterioration of the local population's health and the state of the environment in the region (*Kazakhstanskaya pravda*, Oct. 6, 2000).

In the shadow of the TNCs, whose activities attract significant attention on the part of the government, mass media, and NGOs, stand Kazakhstani companies. Very often their activities are even more harmful to the environment, but they are less vulnerable to law-enforcement agencies, due to the fact that they are frequently under the protection of local authorities.

TECHNOLOGY. At the present time, it is difficult for Kazakhstan to develop and integrate cutting-edge technology, which would make use of natural resources more efficient. At the same time, major foreign companies widely import used equipment and utterly obsolete technology, which, for Kazakhstan, are in fact new. In this fashion, TNCs obtain additional profits through the sale of aging technology, which they would be unable to sell in the West (Mailibayev).

Plans for the transfer of truly cutting-edge, environmentally clean technology by the developed world to developing countries, in accordance with one of the points in *Agenda 21* (Part 34), thus remain no more than an enticing prospect for Kazakhstan.

TRADE. Kazakhstan's state budget is based primarily on the sale of raw materials on the international market. In the first five months of the year 2000, the share of revenues from enterprises in the oil and gas industry

(including drilling and refining operations) constituted 43.7% of all revenues, and ferrous and non-ferrous metallurgical enterprises contributed another 26.8% (*Delovaya nedelya*, July 21, 2000). At the same time, the country is underpaid more than \$500 million annually due to problems connected with price transfers. The major foreign oil, gas, and metallurgical companies sell raw materials at lowered prices through offshore corporations (*Panorama*, Sept. 1, 2000). For instance, the oil companies Hurricane Kumkol Munai and Tengishev oil exported oil at prices three to four times lower than world levels (*Delovaya nedelya*, Feb. 1, 2000).

Despite the underpayment of funds to the state budget by foreign companies, the new tax code provides a special, privileged tax payment regime for big businesses and raw-materials extractors. The main tax burden, as before, falls upon the country's population and on small and medium-sized businesses (Appeal of Non-Governmental Organizations, Parties, and Movements to Deputies of the Senate and Mazhilis of the Republic of Kazakhstan, October 10, 2000).

In this fashion, Kazakhstan has already largely repeated the sad experience of the majority of traditionally raw-materials-oriented (oil-producing) countries: unclear prospects for development, an unstable legal base for businesses, corruption, half-baked reforms, a severe economic crisis, and so forth (Smirnov).

INFORMATION AND ACCESS. The legal basis for access to information can be considered satisfactory, on the whole. However, obtaining information is made more difficult by the constant restructuring of ministries and government agencies; by the lack of clear boundaries to their authority; and by the collapse of the government system for gathering information (data on a number of issues simply does not exist). Virtually no information is published regarding financial expenditures on environmental protection or on the fulfillment of international conventions.

Kazakhstan's ratification of the Aarhus Convention in 2000 has not brought any tangible changes thus far to the existing state of affairs with regard access to information. The country's leadership and rank-and-file bureaucrats continue to ignore both international requirements and those contained in national legislation. For example, in March 2000 the chair of the World Commission on Protected Areas of the World Conservation Union sent a letter to the President and Parliament regarding Kazakhstan's failure to fulfill the World Heritage Convention. This high-ranking official of a well-known international environmental organization failed to receive a reply of any kind. In October 2000, more than 70 Kazakhstani NGOs sent an appeal to the President and the Ministry of Natural Resources and

Environmental Protection concerning the creation of the Medeu park, which threatens the territorial and environmental integrity of Ile-Alatau National Park, nominated for inclusion to the World Heritage List. As of February 2001, a reply was received from the Ministry alone.

Access to information on major foreign companies operating in Kazakhstan has also been less than forthcoming. The materials distributed publicly by the companies themselves provide only a general idea of their activities. Obtaining any other information is a far from simple task. TNCs often do not take the local public seriously and consider it sufficient merely to maintain a small staff for public relations. For example, Green Salvation twice sent a simple survey in Russian and English to eighteen TNCs with representative offices in Almaty. Only five companies provided official replies.

THE ENVIRONMENTAL MOVEMENT

THE MOVEMENT'S SOCIAL BASE. One of the main factors hindering the development of the environmental movement is a declining public support base due to worsening economic conditions. Growing poverty, unceasing mass emigration, and the declining quality of education (*Report on Human Development*, pp. 70, 83) have led to a substantial reduction in the movement's social base in Kazakhstan. A significant number of environmental activists and ecological specialists have already left Kazakhstan for Russia or other countries of the former Soviet Union and beyond.

However, the massive population outflow has not yet noticeably reduced the level of unemployment (*Report on Human Development*, p. 81), as testified by the continuing tension in the labor market. Increased extraction and exporting of oil has not halted the rise in poverty (*Draft of an Environmental Strategy for the World Bank for the Region of Europe and Central Asia*, August 15, 2001). These facts show that for many people, as before, the main goal remains providing for their physical survival, which often drives them to destruction of their natural environment. Poor and impoverished groups in the population, even those wishing to participate in the environmental movement, are unable to actively do so.

FOREIGN ASSISTANCE TO THE ENVIRONMENTAL MOVEMENT. Foreign governments, international organizations, and charitable foundations, unfortunately, have shown a lack of consistency in providing aid to the environmental movement. On the one hand, they have given informational, financial, and technical support. On the other hand, the effectiveness of such assistance leaves much to be desired.

Non-governmental organizations have expressed open concern regarding transparency in the activities of international agencies financing environmental projects. The UNDP, TACIS, and USAID, as before, do not always look upon NGOs as equal partners, and often seek to bind them to their own understanding of the problems involved, and the methods required for reaching their goals. Criticism on the part of NGOs frequently fails to inspire a constructive response from the aforementioned organizations (Aranbayev).

One of the most blatant recent examples is the creation of the Central Asian Regional Ecological Center (REC) in Almaty, without broad or democratic participation on the part of the public. Another example is the series of five seminars conducted at the OSCE's center in Almaty on December 8-13, 2000, with the participation of NGOs from Kazakhstan and Central Asia. In the opinion of Green Salvation, the benefit of these seminars is questionable, given that the goals and tasks were not clearly defined and the seminars' participants included many random individuals (Letter by the Ecological Society Green Salvation to the head of the OSCE center in the Almaty, January 15, 2001).

SOLIDARITY AMONG THE "GREENS." One obvious weakness of the environmental movement is the absence of any overall, guiding principles for the activities of the "greens," or solidarity in their actions. This is shown most clearly in the relationship between environmental NGOs and TNCs operating within Kazakhstan. Some NGOs attempt to combat the TNCs, while others accept money from them. The lack of any overall principles for working with TNCs may become the cause of conflict between the NGOs themselves.

At the Second Ecological Forum in the fall of 2000, an effort was made to establish an internal and external policy for the environmental movement, and to unite environmental organizations "from above" with financial support from Milleukontakt, the Soros Foundation – Kazakhstan, and ISAR's Central Asia office (Almaty, September 27-28, 2000). Judging from the final documents of the forum, these goals were not accomplished. "We're as divided as we were before," one of the participants stated bitterly (*Sustainable Development*, no. 6, 2000, p. 11). At the present time, the Ecological Forum remains an amorphous structure, without a charter, legal status, or a definite list of participants (reply to an inquiry by Green Salvation, January 10, 2001).

An alarming tendency in the development of the green movement in Kazakhstan is the MNREP's effort to control the activities of environmental organizations. Speaking at the Second Eco-Forum, deputy minister

M. Musatayev proposed the formation of a structure for the Ecological Forum along the lines of the Ministry itself, hinting that the MNREP would provide financial support if such a suggestion was followed. Against the background of an inadequate legal base for environmental protection and the continuing collapse of the state's environmental protection system, the attempt by individual NGOs to "play" with the Ministry is bewildering.

Such tendencies, however, are perfectly natural. They are caused by the government's economic policy and its quest to "tame" NGOs that hinder the intensive exploitation of the country's natural resources. A similar trend is also visible in Russia, where it is even more clearly expressed (Zabelin).

POLITICAL IMMATURITY. The movement's political immaturity is demonstrated by its lack of clearly defined goals and tasks, its insufficient use of the progressive experience of green movements in foreign countries (seminar on TNCs, Almaty, September 2000), its quest for a "unique" path of development, and so on. In defending environmental human rights and the rights of nature, most environmental NGOs go no further than issuing declarations, declining to take part in direct action or participation in the lawmaking process. Environmental organizations do not play a significant role in resolving legal issues on nature protection or in defending the environmental rights of citizens (which can be explained by the green movement's current low level of social support among the population). In particular, the weak ties between environmental organizations and other NGOs in Kazakhstan, including those concerned with human rights, should be noted.

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TIME DOES NOT WAIT

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“Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievements, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation.”

The World Charter for Nature, October 28, 1982.

In March 1999 and May 2000 the Ecological Society Green Salvation prepared open letters under the general title “A Heritage That Nobody Needs!”, which were published in the Kazakhstani newspaper Vremya po... (Time for...). The letters were signed by well-known writers and public figures, ecologists, and active NGO members. These letters resonated widely with the public, and were reprinted by some Kazakhstani publications and the Russian newspaper Zelyonyi mir (Green World). In them, the concern was expressed that the condition of unique cultural and natural monuments in Kazakhstan has declined catastrophically, and the government has not adopted effective measures for their rescue nor made full use of the opportunities granted to it by the Paris Convention.

More than two years have passed from the moment of the first publication, but the situation with regard to fulfillment of the World Heritage Convention in Kazakhstan remains virtually unchanged. Time does not wait, and the moment may arrive when it will be difficult to save the country's cultural and natural heritage, even with international support. After all, this is not only national, but also universal property, and should be handed down to future generations!

The Convention Concerning Protection of the World Cultural and Natural Heritage (Paris, 1972), one of the tools created by the world community for the protection and preservation of natural and cultural treasures of universal importance, is extremely popular throughout the world. This is no accident; after all, the benefits provided by the Convention to participating governments are obvious.

Many examples exist of successful international cooperation aimed at the rescue of universal property. For example, 20 million dollars were spent on the restoration of the Buddhist sanctuary of Borobudur (on the island of Java in Indonesia). Two-thirds of that sum was allocated by the Indonesian government, and 7 million was collected in the course of an international campaign organized by UNESCO, in which 27 countries took part. (*The UNESCO Courier*, Sept. – Oct. 1994). In 1984, in answer to an appeal by UNESCO to help the government of Yemen carry out a project for the restoration of the city of Sana'a, the cost of which was estimated at 300 million dollars, Italy, the Netherlands, Norway, Germany, France, South Korea, Switzerland and Japan responded. They offered the services of their experts and provided technical and financial assistance, despite the fact that Sana'a was not yet included on the World Heritage List (*The UNESCO Courier*, Dec. 1991). Many countries of the former Soviet Union already have natural and cultural monuments included on the World Heritage List.

And what of Kazakhstan? Strangely enough, to date no monument on our country's territory has received the status of a World Heritage Site. Are there really no natural sites, historical or architectural monuments, or archeological complexes in our republic that would meet the criteria of the Paris Convention?!

Kazakhstan joined this convention on April 29, 1994. From that moment, the country has had the opportunity to attract international legal, technical and financial assistance for the study, restoration, and protection of cultural and natural properties. Such assistance can be provided to states participating in the Convention and possessing treasures "included or potentially suitable for inclusion in" the World Heritage List (*Convention...*, Article 13). However, Kazakhstan's joining the Convention has only ensured our country's access to this international resource. This means that our problems will not solve themselves, as only the state can decide whether or not to make use of this resource. How skillfully has our government used these international mechanisms for protecting the people's cultural and natural treasures?

In signing the Convention, the state has recognized that "the duty of ensuring the identification, protection, conservation, presentation and

transmission to future generations of the cultural and natural heritage...situated on its territory, belongs primarily to that State” (*Convention...*, Article 4). However, the government, figuratively speaking, has turned a cold shoulder to fulfillment of the obligations it has taken on.

Since ratifying the Convention, the Republic of Kazakhstan has not prepared any periodic reports on its implementation. For five years, until the spring of 1999, Kazakhstan did not pay its dues to the World Heritage Fund, and consequently could not count on the full help of the World Heritage Committee. For the same reason, a representative of Kazakhstan could not be elected to the Intergovernmental Committee for the Protection of Cultural and Natural Heritage. All this not only has an impact on the international authority of our state, but has also resulted in lost time and financial benefits. Elementary mathematical calculations easily show that the savings from the missed payments appear rather dubious. Kazakhstan’s debts to the Fund from 1995 through February 1999 total about US \$30,000, while the contract between UNESCO and the National Commission of the Republic of Kazakhstan on UNESCO (No. 700.061.0) concerning the preparation of the World Heritage Nomination of the mausoleum of Khodzha Akhmed Yasavi was concluded for the sum of US \$11,522 (“Report on the Results...,” p. 1). Thus, Kazakhstan will receive for the nomination of only one cultural monument much more than it makes in one annual payment to the Fund.

On March 19, 1999, the debt was paid off. It would seem that now the government should act to make the most of the opportunities provided by the Convention. For the past two years, however, the situation has remained essentially unchanged, and Kazakhstan still has no sites included on the World Heritage List. What have the results of such passivity been?

In 1998 a preliminary list of monuments of culture proposed for the World Heritage List was sent to the World Heritage Committee; let’s note at once that to date, none of them has been nominated. Only in 2000 did Kazakhstan address the Committee with the request to render financial assistance for the preparing the nomination “of the architectural complex of Khodzha Akhmed Yasavi and the archeological territory of the medieval city of Yasy-Turkestan.” The request was satisfied, and from January 11 to January 21, 2001, the UNESCO experts J. Tanigichi and D. Michelmore worked in Kazakhstan. They familiarized themselves with the documentation and condition of the complex and nearby territory. The experts came to the conclusion that nomination was possible “only of the mausoleum as a separate architectural monument with a minimal amount of territory, without including any of the surrounding sites, and including

the archeological complex only as a buffer zone... The inclusion of the town as a nominated object could result in the nomination's rejection, as the reconstruction of a number of sites surrounding the mausoleum and the loss of the cultural layer of the archeological complex do not sufficiently fulfill the requirements of integrity and authenticity" ("Report on the Results...", p. 2). In other words, as a result of thoughtless actions by officials "the archeological territory of the medieval city of Yasy" has been brought to a state that does not meet the conditions of the Convention, excluding the opportunity to provide it the status of a World Heritage Site. It is obvious that to the officials bringing "order" to the city and giving the command to "reconstruct a number of sites," it was more important to blow dust in the eyes of foreign tourists than to save a historical monument. Who knows how the complex might have "changed" further, if the process of its preparation for inclusion on the World Heritage List had not begun!?

In their recommendations, the UNESCO experts emphasize that "the territory of the museum reserve including the historical nucleus of the city of Turkestan and offered in nomination as a buffer zone for the monument, requires serious measures for the improvement of its condition...such measures include the clearing of garbage from the city's territory, restricting the entrance of [motorized] transport, exact demarcation of the district's borders, preservation of archeological excavations (primarily by filling them in again), filling the trench of the drainage channel with soil, clearing the water-filled channels of the moats (which are currently marsh-like)... It is necessary to bring order to the archeological research performed, and to coordinate it with plans for the preservation, presentation, and interpretation of the monument and its buffer zone through the development and confirmation of a program for the archeological, architectural and historical study of the mausoleum of Khodzha Akhmed Yasavi and its buffer zone..." ("Report on the Results..." p. 3).

It is also necessary to take into account that, according to a new rule on the terms for considering applications for the inclusion of sites on the World Heritage List, the applications sent to the World Heritage Committee by February 1, 2002 will be considered only in 2003. This means that even if the nomination for the mausoleum of Khodzha Akhmed Yasavi is prepared in 2001 and not rejected by the commission, it will receive the status of a World Heritage Site no earlier than 2003. According to experts, however, completing the necessary work will require between two and two and a half years ("Protocol and Decisions..." p 7).

Another example: At the session of the National Commission on UNESCO held on February 3, 2001, the director of the Institute for the

Protection of Monuments of Material Culture, S. M. Surtaev, noted that the Tamgaly complex, previously announced for inclusion on the World Heritage List, “is under threat, as only the petroglyphs have the status of a monument of local importance. The Institute has created a plan of emergency measures for the protection of Tamgaly; however, its implementation requires the adoption of normative acts and appropriate financing” (“Protocol and Decisions...,” p. 8). In the work plan of the National Commission for 2001 are planned “the preparation and organization of work for the preservation of the Tamgaly petroglyphs (with the financial support of UNESCO and the Government of Norway)” (“Plan...,” p. 4), but not the performance of concrete measures for their rescue. This delay may result in the monument’s loss of value as a result of ongoing destruction, which occurs under the influence not only of natural factors, but also as a result of the unattended exploitation of the complex by travel companies and “wild” tourists. The experts of UNESCO will hardly consider it possible to include on the World Heritage List a site that has undergone severe destruction. Until the government of Kazakhstan resolves the legal, financial and other questions aimed at the rescue of the Tamgaly complex, there can be no talk about preparing its nomination.

Unfortunately, the normative and legal base of Republic of Kazakhstan has significant flaws that hinder the Convention’s fulfillment. It was noted also by the experts of the World Heritage Center in their report on the results of their mission to Turkestan that “the section of the nomination devoted to the legal protection of the monument and its security zone cannot be completed until a regime for the contents and use of the buffer zone and new rules of town-planning regulation have been produced and authorized by the appropriate bodies..., guaranteeing the safety and correct use of the monument and its surroundings, in correspondence with current requirements and accepted international standards” (“Report on the Results...,” p. 2).

The situation with regard to the promotion of natural sites for the World Heritage List is even more complex. Even at the aforementioned session of the National Commission of the Republic of Kazakhstan on UNESCO, it was noted that: “Some progress has been seen in the sphere of preservation of natural heritage; however, thus far the opportunities provided by UNESCO (in particular, the study of questions of financial support, submission of proposals for the creation of bioserves, and others), and the development of cooperation with well-known international non-governmental organizations that are partners of UNESCO have been used rather poorly” (“Protocol and Decisions...,” p. 5).

“Some progress” consists of the following: on December 25, 2000, a session of the working group on the inclusion of natural sites of the Republic of Kazakhstan on the World Heritage List; true, the structure of this group to date (as of July 1, 2001) has not been authorized by the government. At the session, a preliminary list of natural monuments to be proposed for inclusion on the World Heritage List was finally created and the decision was adopted to send it to the World Heritage Committee in the first quarter of 2001, after completing it according to the requirements of the Convention. However, to date there is no official information on whether the list was sent to the Committee.

The list included eight sites. True, the preparation of nominations by the National Commission on UNESCO is talked about very vaguely. Namely, “the study, together with the World Heritage Fund, of questions of allocating financial and expert help for drafting nominations for natural heritage sites is planned for the purpose of inclusion on the World Heritage List” (“Plan for the Work...,” p. 5). Concrete terms for preparing nominations are not established, and the persons responsible are not defined. It is pertinent to recall that applications sent to the World Heritage Committee after February 1, 2002 will be considered only in 2004.

It is possible that only the nomination “Steppes and Lakes of Northern Kazakhstan,” uniting the Naurzum and Kuraldzhin wildlife preserves, will be submitted to the World Heritage Committee in 2001. The advisory and financial help in preparing this nomination was provided by the Union for the Protection of Nature (NABU) of Germany, which signed an agreement on cooperation with the Ministry of Ecology and Natural Resources in 1998, and the World Wildlife Fund (WWF). At a working seminar, “Steppes and Lakes of Northern Kazakhstan,” conducted in Germany on May 29-30, 2001, representatives of Kazakhstan, NABU, and the WWF resolved to prepare the final nomination for October 2001.

International conservation organizations have at times shown greater interest in Kazakhstan’s fulfillment of the World Heritage Convention than state bodies. In contrast to our officials, the international community considers the Paris Convention to be one of the fundamental agreements for the protection of nature. Therefore, such international organizations as the WWF, the World Conservation Union (IUCN) and some Kazakhstani non-governmental organizations (NGOs) have persistently sought to persuade the government to fulfill its international obligations. For many years, various Kazakhstani NGOs have repeatedly addressed the Ministry of Foreign Affairs, the Ministry of Culture, the National Commission on UNESCO, and other bodies, calling for them to use the

opportunities provided by the World Heritage Convention to preserve the country's unique natural sites.

The World Conservation Union (IUCN) is the official adviser of UNESCO for the implementation of the Paris Convention in the field of natural heritage. One of the priorities of its program for Central Asia is fulfillment of the World Heritage Convention; therefore, IUCN tries to promote the progress of the Convention in the Central Asian region. With this goal in mind, Adrian Phillips, the chairman of IUCN's World Commission on Protected Areas, sent a letter on March 6, 2000 to the President and Parliament of Kazakhstan. In his letter, he noted that by failing to nominate natural monuments for the World Heritage List, Kazakhstan may lose many benefits offered by the Convention, and unique natural territories will remain threatened by pollution and destruction. Mr. Phillips expressed the IUCN's readiness to provide technical assistance to the Republic of Kazakhstan in preparing its nominations. The letter was officially registered by the Senate chancellery on March 20, 2000. To date, however, as we were informed by Mr. Phillips, he has received no reply. Obviously, the officials are too busy to answer such letters.

In May 2000, the World Wildlife Fund, with the support of the World Heritage Center and Greenpeace Russia, led an international seminar and training session in the city of Almaty on the promotion of sites for the World Heritage List. Representatives of ministries and government agencies, NGOs, and scientists from the states of Central Asia and Kazakhstan took part. The purpose of the seminar was to train experts and support the initiatives of the Central Asian states concerning the promotion of natural sites to the World Heritage List.

However, no matter how interesting the reports of the scientists and reserve employees voiced at the seminar, they are not yet official nominations, which must be initiated by the governments involved. Unfortunately none of the five countries of the region, to date, has presented any natural territory for nomination.

Why has the process of promotion of natural sites to the World Heritage List developed so slowly, is so strangely organized, and reminds one of the course of a long and severe illness? What is it – carelessness by officials? Someone's malicious intention? Or does our country not require any international help, because its natural heritage is protected, studied, and presented just fine without it? Let's address the facts.

On April 20, 1998, the President of the Republic of Kazakhstan issued Decree No. 3929 "On Changing the Borders of the City of Almaty." A total of 4673 hectares was transferred within the city limits. Of this territory,

829 hectares was reserved for a local natural park, according to a resolution by the akim (mayor) of Almaty (“On the Question of the Organization of the Medeu Natural Park,” No. 906, October 1, 1999). A total of 57.9 hectares previously belonging to Ile-Alatau National Park were included in this park’s territory. On April 4, 2000, the official agency “Medeu” was created for management of the reserved territories. The public sounded the alarm. Ile-Alatau National Park is an applicant for the World Heritage, List, and the reservation of part of its grounds for an urban park and the reduction of their nature protection status creates a dangerous precedent of infringement on the integrity of the park’s ecosystem, reducing its chances to become a World Heritage site.

Representatives of more than fifty NGOs sent an appeal to the President, Parliament and the Ministry of Natural Resources and Environmental Protection (MNREP) concerning the creation of the Medeu city park. The MNREP’s reply stated that “the creation of a city park within the borders of the national park and its buffer zone will have extremely negative consequences... The Ministry of Natural Resources and Environmental Protection of the Republic of Kazakhstan considers the creation of the Medeu city park unnecessary” (“Letter...”). Despite this, however, the question of the city park’s destiny has yet to be resolved.

On March 14, 2000, at a session of the Council of Ministers of the Republic of Kazakhstan it was announced that Kazakhstan’s debts for payment of membership dues to various international organizations totaled US \$21 million. Minister of Foreign Affairs E. Idrisov suggested “... developing a pragmatic approach from the standpoint of the benefits that we receive from participation in a particular organization, and how much we pay to its budget” (*Panorama*, March 17, 2000). Will such a position result in the end of payments to the World Heritage Fund once again? What will we save?! How it is possible to measure the cultural property of the people and the natural riches of the land on which they live with the sizes of member payments?! Isn’t it in the state’s best interests to save national and universal property, regardless of expense? How it is possible to underestimate the help offered to it by the world community?!

Other examples can be provided, testifying that all is not well in the business of protecting our natural heritage. In specially protected natural territories, including those included on the aforementioned preliminary list, the seizure of land, illegal logging operations, hunting of rare and disappearing animals, tourist activity without taking into account the allowable recreational burden, etc., take place.

Evidently, the answer to the aforementioned questions may be the following:

The inclusion of natural sites on the World Heritage List means giving them maximum protected status and international regulation of their condition. However, untouched natural territories have significant biological, water, land, and recreational resources, which present great interest to various structures, including commercial firms. Therefore, nobody needs prying by “outside eyes.” Market extremism and the aspiration to “squeeze” maximum profit from nature by all possible means result in the destruction of the existing system for nature protection and the plundering of natural riches, and are the main obstacle to the inclusion of natural sites on the World Heritage List.

This is why it is so important to achieve the prompt provision of World Heritage status to the territories included on the preliminary list. It will raise our chances to save the unique nature of the Altay mountains, Ile-Alatau National Park, the Naurzum preserve...

However, all of the efforts of scientists, the public, and international and Kazakhstani NGOs for the preservation of the country’s natural and cultural property will have little effect as long as the government of the Republic of Kazakhstan does not make the solution of these problems a priority of state policy. According to the conditions of the World Heritage Convention, it is the government that must recognize the cultural and natural monuments having universal value on its territory, give them the appropriate protected status, and create services for their preservation and presentation (*Convention...*, Article 5).

It is time for our government to understand that virtually unprotected monuments of culture and nature cannot eternally resist the onslaught of time and the destructive forces of the wild market, and that a people deprived of their natural and cultural heritage has no future!

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JUST THE FACTS

- On April 29, 1994, Kazakhstan joined the Convention Concerning Protection of the World Cultural and Natural Heritage.
- In 1998, an agreement on cooperation between the Ministry of Ecology and Natural Resources of the Republic of Kazakhstan and the Union for the Protection of Nature in Germany (NABU) was signed.
- In 1998, the preliminary list of monuments of culture offered for the World Heritage List was sent to the World Heritage Center.
- On March 19, 1999, the Republic of Kazakhstan's debt to the World Heritage Fund was paid.
- On March 6, 2000, Adrian Phillips, the chair of the World Commission on Protected Areas of the World Conservation Union, sent a letter to the President and Parliament of Kazakhstan expressing concern concerning Kazakhstan's passive participation in the Convention. The letter remained unanswered.
- On May 8-11, 2000, the World Wildlife Fund (WWF), with the support of the World Heritage Center and Greenpeace Russia, led an international seminar in Almaty entitled "Training on Preparation and Promotion of the Nomination of Natural Sites of World Cultural and Natural Heritage in the Countries of Central Asia."
- On December 25, 2000, the session of the working group on inclusion of natural sites of the Republic of Kazakhstan on the UNESCO World Cultural and Natural Heritage List was held. The structure of the working group had not been officially authorized as of July 1, 2001.
- On January 11-21, 2001, work was carried out in the city of Turkestan by UNESCO experts J. Taniguchi and D. Michelmore to assist in preparing the nomination of the architectural complex of Khodzha Akhmed Yasavi.
- On May 29-30, 2001 a working seminar was held on the island of Film (Germany) by representatives of NABU, the WWF, and Kazakhstan's Ministry of Natural Resources and Environmental Protection, at which questions concerning the preparation of the nomination "Steppes and Lakes of Northern Kazakhstan" (the Kuraldzhin and Naurzum wildlife preserves) were discussed. The preparation of the final version of the document was planned for September 2001.



MONEY FOR NOTHING...? – PROBLEMS OF ENVIRONMENTAL FINANCING AND EXPENDITURE IN KAZAKHSTAN

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This text is based on the Environmental Performance Review (EPR) of Kazakhstan, which was made in May-June 2000 by a mission from the United Nations' Economic Commission for Europe. The report includes a set of recommendations for the government of Kazakhstan to be adopted in its environmental policy. These recommendations were presented for the government in September 2000 in Geneva, where they approved all the recommendations. The report and its recommendations are published by the Economic Commission for Europe (UN-ECE).

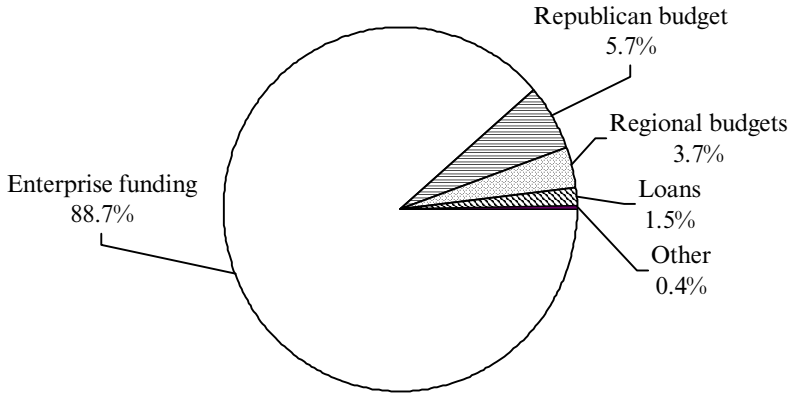
My task was to evaluate economic, regulatory and planning instruments in environmental policy and to analyse environmental financing and expenditures in Kazakhstan. In my view, the issues of environmental financing in Kazakhstan have alarming development trends, and that is why I chose them as the topic for my Article. I am very grateful for all the people at Green Salvation, other NGOs and academic institutions, who helped me with my research in last May.

OVERALL ENVIRONMENTAL FINANCING AND EXPENDITURES IN KAZAKHSTAN

Environmental financing in Kazakhstan comes from the republican budget, regional environmental protection funds, foreign grants and loans, and enterprises' own funds. In 1999, a total of 18,915 mln tenge (158 mln USD) were used for environmental protection projects and activities. Compared to the GDP of 1998 (22,300 mln USD), this is some 0.7% of GDP. The largest part, 16,871 mln tenge or 89.7% of the total expenditure

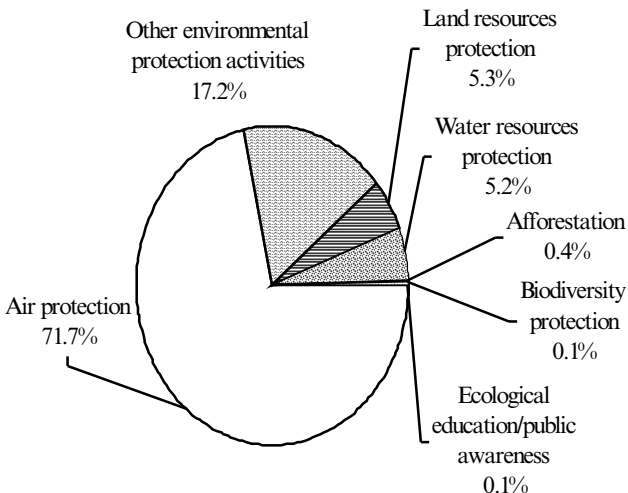
was financed by enterprises' own funds. A total of 5.1% (or 979 mln tenge) was financed by the republican budget, and 3.3% (or 642 mln tenge) by regional funds. The rest was financed by loans and other sources.

Table 1. Financing of environmental projects and activities, 1999



In 1999, nearly 72% of available funds were used for air protection. Other activities included land protection, water resources protection and non-specified environmental uses.

Table 2. Structure of environmental expenditure, 1999



FINANCING BY DIFFERENT SOURCES

1. Environmental protection funds

The governmental decree “On the Creation of Nature Protection Funds” (1993) established a system of environmental protection funds, which were consolidated into the state budget in 1994. In 1998, environmental protection funds were established again by a new decree, “On the Creation of Environmental Protection Funds.” Altogether, 16 regional and one national fund were created. At the end of 1999, the situation changed again, when the governmental law “On Republican Budget for 1999 with Amendments and Supplements” ordered that all extrabudgetary funds at national level should be closed. When asked for the reason of this decision, Kazakh officials stated that this was a recommendation from the IMF. Therefore, currently there are 16 regional environmental funds (in Astana and Almaty, and in the 14 oblasts), but no national fund, and all national financing is via the state budget.

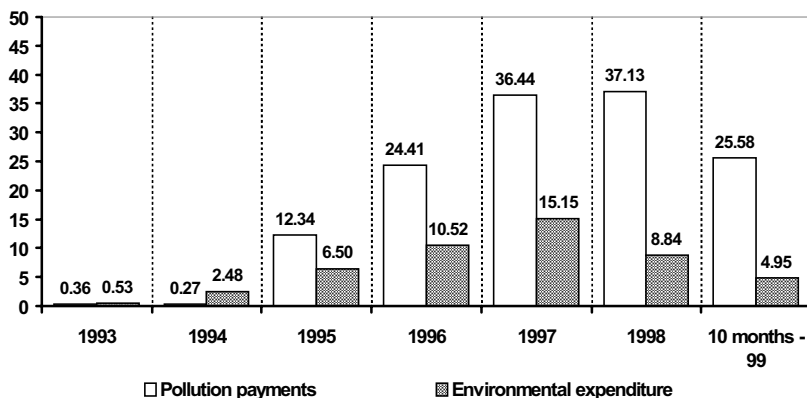
Some environmental payments are collected directly to the state budget, which means that they do not pass through the system of funds. These include all excise duties, royalties, bonuses and excess revenue payments for use of mineral resources, national payments for production sharing agreements and payments for the use of animals. Pollution payments, payments for land renting, administrative fines and penalties for illegal hunting are divided between regional and state budgets in a certain proportion, which is defined in the legislation.

The division of environmental payments between the State and local budgets has been amended many times. Until 1997, local budgets received 85% of collected funds and the state budget 15%. In 1997, the situation changed, so that 70% of the collected payments were given to the local budgets and 30% to the state budget. In 1999, it was ruled that 50% of the collected charges go to the state budget, and 50% to the local budgets.

The 1997 law “On Environmental Protection” states that “...the use of payments, collected by the environmental protection funds, for purposes not connected with environmental protection, is forbidden...” (Article 34). However, most of the money accruing to the state budget from environmental payments is used for other than environmental purposes. A similar situation prevails with the environmental pollution payments going to the regional budgets. The percentage of money used for environmental protection purposes compared to the money collected in environmental pollution and nature use payments has constantly shrunk. In 1997, some 36% of collected payments were actually used for environmental protection;

in 1998 this number was only 25%. This means that Kazakshtan is using most of the collected environmental payments for other than environmental purposes. In other transition countries the situation is much better. For comparison, in 1997, this percentage was 93% in the Russian Federation and Poland, 114% in Estonia (which means that they actually used “real” budgetary funds for environmental protection) and 46% in Bulgaria.

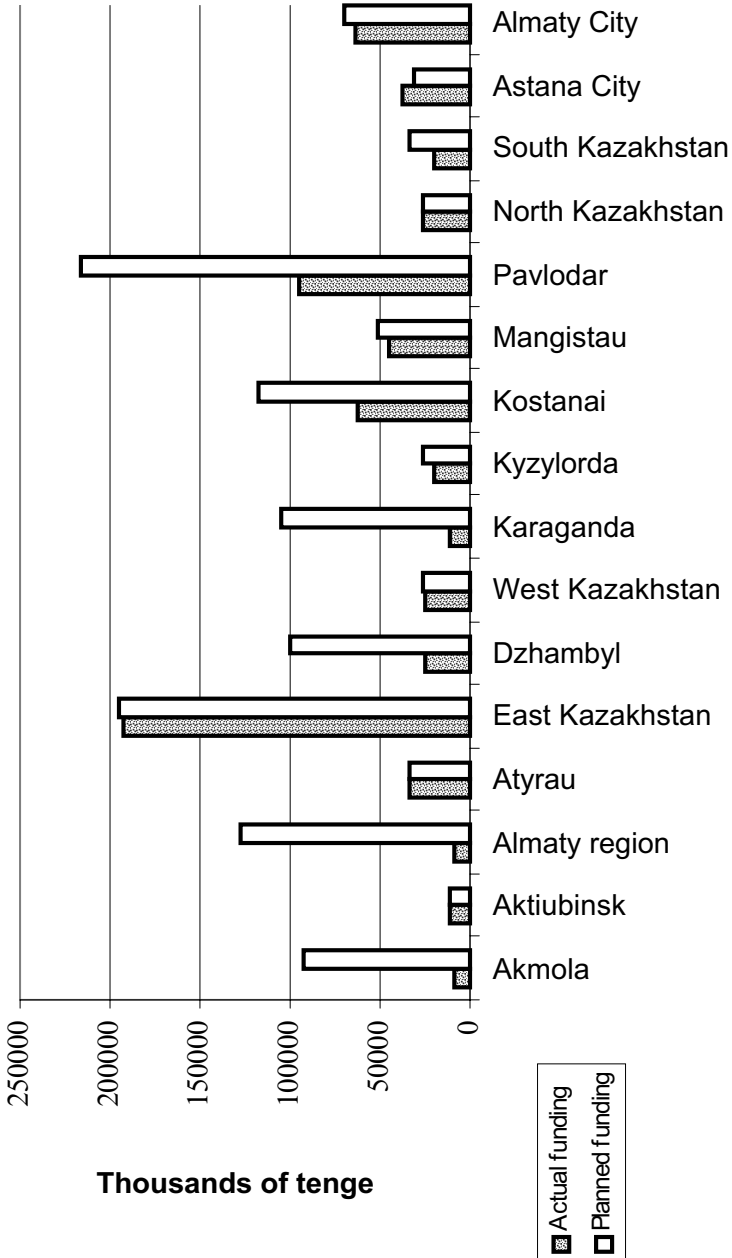
Table 3. Pollution payments and governmental environmental expenditure in 1993-1999 (in mln USD)



The 16 regional and city funds administer pollution and nature use payments from enterprises. They calculate the charges for each enterprise, based on the permit of the enterprise and on the charge level. Regional funds also calculate the nature protection expenditures for the coming year in their region, which in principle form the basis for the charge level of that year. Tax authorities assist the funds in actually collecting the payments from enterprises.

The part of pollution and nature use payments going to regional funds has constantly decreased, mainly for two reasons. In addition to their shrinking share referred to above, the amount of pollution and nature use payments used by local administration for other than environmental protection purposes has increased every year. For example, in Almaty in 1999, only 25% of the pollution and nature use payments accruing to the city budget were actually planned to be transferred from the city budget to the city environmental protection fund. Of the 25% planned, some 91% were actually delivered. As a result, instead of 180 million tenge, the fund in fact received some 64 million tenge in 1999.

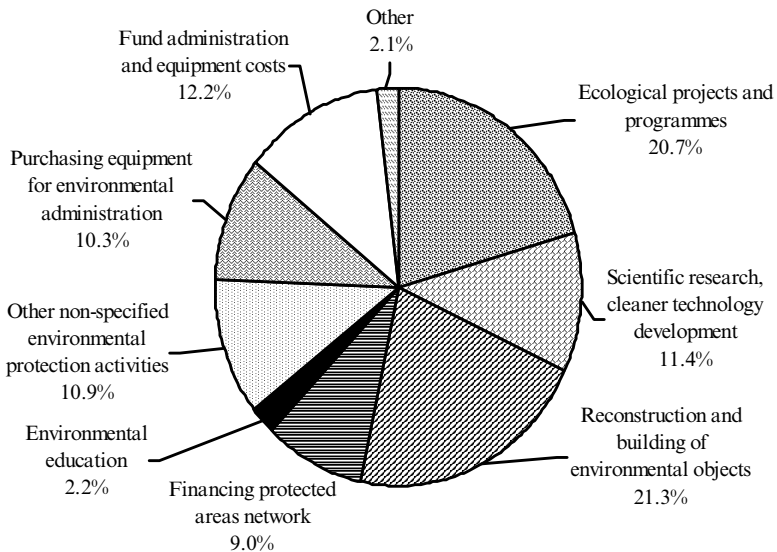
Table 4. Planned vs. Actual environmental expenditures in regions, 1999



Some 3.3% or 642 mln tenge of the total funding of environmental projects and activities was financed from the regional funds. Fund activities vary significantly in different regions, as the legislation does not contain mechanisms for distributing ecological funds between regions. Some, but not all regions and cities, have long-term environmental financing programmes. Regional fund directors are assigned by the Ministry according to proposals of the akimats. All financing is given in the form of grants.

According to the statistics, most of the total regional financing is used for various ecological projects and programmes (21% in 1999) and for building and rehabilitation of environmental protection objects (21% in 1999). For example, in Almaty, 31% of fund financing were used for the “Taza aua-Zhanga-daua” programme, which aims to improve the environmental situation in the city. Other major expenditure items include scientific research and cleaner technology development, financing of the protected areas network and other, non-specified use. As the financing rarely materialises according to the initial plans (in some akimats regional funds actually received less than 10% of the planned financing in 1999), rational advance planning is almost impossible. Some 20% of financing are used to finance material expenses of regional environmental administration and administrative costs of funds, although there is great regional variation – in some regions, almost 80% of financing is used solely for the administrative and material costs of environmental administration.

Table 5. Regional funds: use of all funds in 1999



2. Budgetary financing (government budget)

In a sense there is no “real” budgetary environmental financing in Kazakhstan, because the government collects far more environmental payments from enterprises and nature users than it uses for environmental purposes. As mentioned earlier, the separate national environmental protection fund was closed down at the end of 1999. Beginning in 2000, all national funds are collected by the Ministry of State Revenue and go directly to the State budget. Environmental payments produce significant revenues for the State budget. In 1999, nearly 2,700 million tenge were collected in pollution payments, 8,350 million tenge in mineral resources payments and 8,600 million tenge in excise duties.

Collected pollution payments have exceeded plans every year before 1999. However, in 1999, the collected pollution payments amounted to less than 50% of the expectation. One reason for this decrease could be the resistance of enterprises to pay rapidly increasing payments, which are used mainly for fiscal purposes by the government.

Table 6. Some environmental payments in 1998-1999

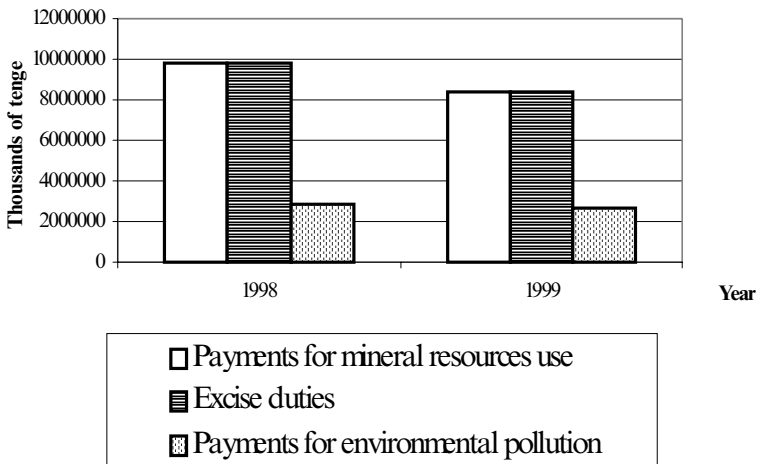
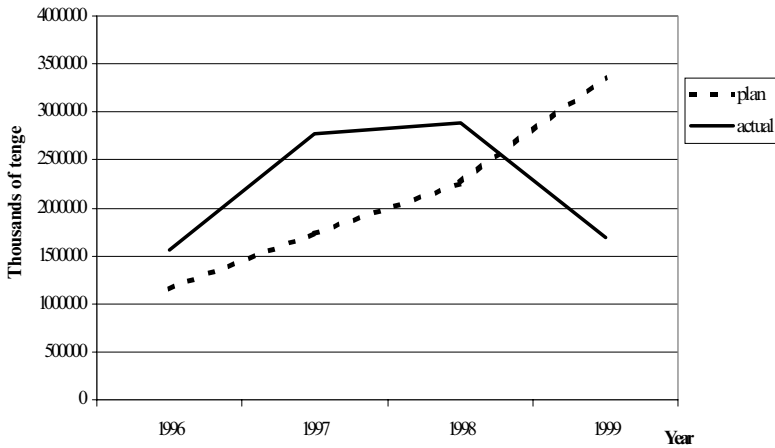
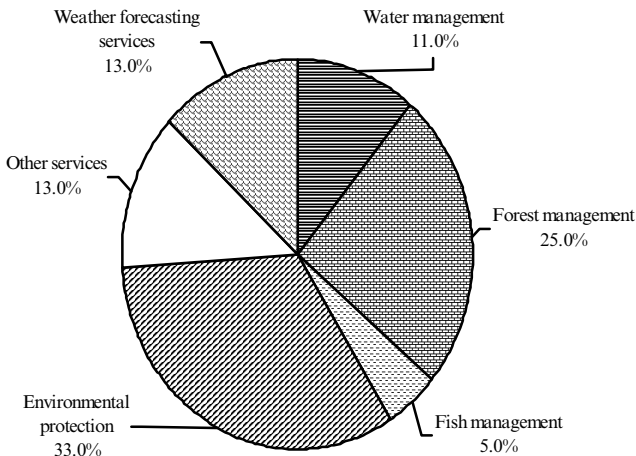


Table 7. Collected environmental payments in 1996-1999



In 2000, the Ministry of Finance (MOF) planned to spend some 2,980 million tenge (21 million USD) for environment-related purposes. Of this amount, 33% was to be spent for environmental protection, and 25% for forest management. Other major expenditures included water management (11%) and financing of the hydro-meteorological service (13%).

Table 8. MOF Financing for environment in 2000



In year 2000, over 50% of the amount allocated to environmental protection was intended for the rehabilitation of the Mirgalimsai water reservoir. Some 20% was to be spent for construction and maintenance of republican environmental protection objects, and 11% for financing protected territories.

Table 9. Environmental Protection Expenditure Plan of the MOF in 2000

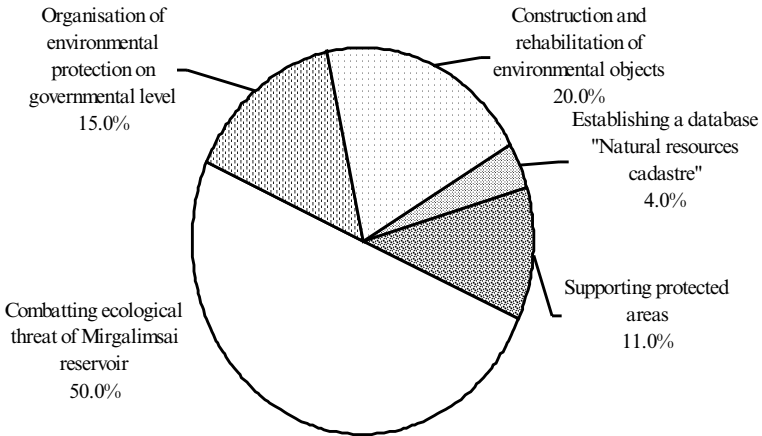
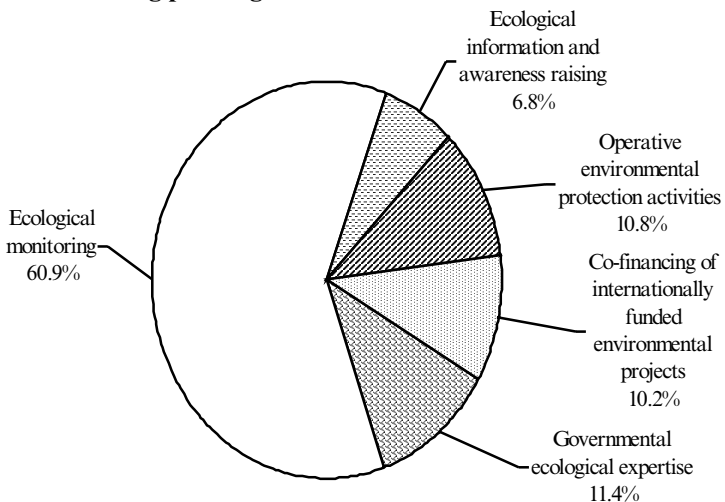


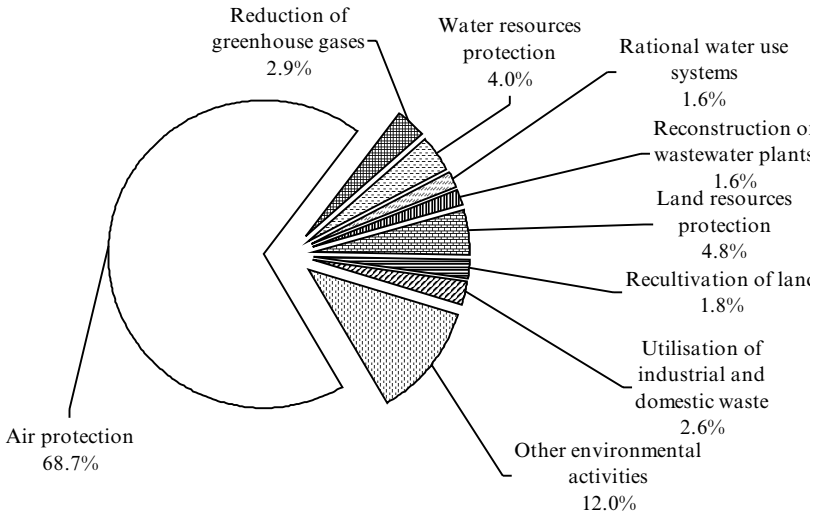
Table 10. Financing plan of governmental environmental activities in 2000



3. Enterprise funds

Most of the enterprise financing of environmental protection in 1999 was directed toward air protection (68%). The reconstruction of waste water treatment plants, the protection of water and land resources, the reduction of greenhouse gas emissions, the use of industrial wastes and other environmental activities were also financed.

Table 11. Environmental expenditures of enterprises in 1999



SUBSIDIES AND PROMOTION OF SOFT LOANS

Environmental subsidies are mentioned in the Law on Environmental Protection, which states that economic stimulation of environmental protection can be implemented through subsidies and other means, that are not in contradiction with other legislative acts. The law, however, does not indicate which criteria the government will use in defining that an enterprise deserves subsidies. In practice, subsidies for ecological reasons do not exist.

One of the objectives of the MNREP in the long run is to create a “Green Fund,” which could allocate soft credits for environmental investments of enterprises. Currently, there are no soft credits, and as the banking system is not developed, it is difficult to obtain loans for environmental investments. There is a system of state guarantees, but only for enterprises, that are under the ownership of the government.

Conclusions and recommendations

The percentage of pollution and nature use payments, used for environmental protection activities, has decreased constantly in Kazakhstan. According to the statistics of the MNREP, the percentage was less than 25% in 1998. The process of raising pollution payments and at the same time using the collected funds increasingly for fiscal purposes is an alarming one. It exacerbates the situation, where enterprises have strong needs for environmental investments, but have to spend their scarce financial means on environmental payments to the Government – which does not finance the needed environmental protection expenditures. Pollution payments can therefore actually decrease the amount of environmental investment in Kazakhstan. This situation carries the risk that enterprises' willingness to comply with environmental regulations and/or to make environmental payments is reduced.

The practice also leads to unfavourable incentives for environmental and other authorities. For example, in some cities, enterprises are being placed within the city limits, as this enables collection of charges for excess air emissions. As the excess emissions give 4-10 times more revenue for the authorities, it is profitable to increase pollution in areas that are already very polluted. In conclusion, the impression of the Government "earning income" from environmental pollution for general revenue needs is neither advantageous for the creation of stable revenue collection mechanisms, nor for environmental management.

There seems to be a discrepancy between the declarations of governmental priorities and actual governmental funding of environmental protection. Kazakhstan's substantial environmental problems certainly demand equally substantial funds for their management and, it is hoped, solution. The international community is providing some of these funds. However, national commitments to sustainable development require clearly visible national contributions. Government efforts in this area should be stepped up.

Recommendation 1:

Kazakhstan should make a conscious and clearly visible effort to contribute public funds to the management and solution of environmental problems, as a prerequisite for sustainable development. Environmental payments made to the state or regional budgets and/or environmental protection funds should actually be used for environmental protection projects, investments and soft loans. If their levels cannot be maintained for the sole purpose of environmental expenditures, their rates should be reduced, and losses in public revenues should be made up by increases in other tax payments.

The ultimate purpose of the pollution payment system should be the increase of enterprise investment in cleaner production technologies, in the interest of sustainable economic growth. High pollution payment levels provide strong incentives for technological change, but enterprises also need financial means in order to change their production processes. Most enterprises are working only at part of their capacity and face great economic difficulties, meaning a scarcity of funds for investment. Further complications arise from the low level of development of the banking system, and the absence of state guarantees or soft loans for environmental purposes. Therefore, financing mechanisms for enterprises need to be developed. These mechanisms should be worked out together with the Ministry of Finance and the Ministry for State Revenue, both key ministries for revising the current, unsustainable practices.

Recommendation 2:

A system of tax deductions or tax holidays, leaving a part of pollution payments due in an enterprise for environmental protection investments should be established. In the longer run, part of the pollution payments could be used for facilitating soft loans for environmental investments.

Environmental fund expenditures and activities vary significantly in different regions of Kazakhstan, as the legislation does not contain any mechanisms for distributing environmental funds. Because Kazakhstan is a large country, and has different environmental conditions in different regions, it is natural that the environmental priorities vary. However, some of the projects, implemented by local funds, do not comply with the environmental priorities of the country or of the region. This situation tends to increase regional disparities, the more so as no planning or other mechanism seems to be available for voluntary cooperation between regions.

In the absence of this general mechanism, remedies could perhaps be found by changes in the management of regional and city environmental protection funds. One possibility may be to constitute a “Fund Committee,” composed of representatives of different stakeholders, such as governmental institutions at all levels of administration, industry, scientists and other NGOs. Such committees could be asked to guide investment decisions, with due respect for projects that affect environmental conditions in more than one region. In the medium term, the desirable cooperation between regions and/or cities should be the subject of state regulation.

Recommendation 3:

Revising the management practices of environmental protection funds should improve the possibilities for reducing regional disparities in environmental conditions.

The new system for issuing environmental permits for enterprises has simplified the permitting process. The computerized registry of all enterprise emissions will in the future allow for a comprehensive picture of the country's pollution and enable a more effective use of environmental steering mechanisms. It will also allow for emission trading.

However, even in the new system, the current maximum permitted discharges allow increases in emissions without effective sanctions. MPEs of Kazakh enterprises need to be reduced in order to make the economic incentives more effective. But the basic problem of the prevailing system is its legislative basis. The permit and charge systems can be amended rapidly, but the legislative and normative bases cannot be reformed at the same pace. The basis for environmental norms is still the system of maximum permitted concentrations, sanitary zones and dispersion calculations, a complicated and expensive system that does not work optimally in a market economy. The only criterion for determining charges is the toxicity of substances to humans. There are no payments, for instance, for greenhouse gases or ozone-depleting substances. The health-based normative environmental criteria of the present system should be revised to include technology-based criteria as well.

Recommendation 4:

The process of improving the environmental permit and the environmental impact assessment systems should be continued so that the system can better address new conditions and needs. The most urgent need in this further revision would be to start incorporating technology-based criteria into permits.



LEGAL GUARANTEES OF THE CONVENTION ON PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE IN KAZAKHSTAN

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...their Laws...which they take special Care to multiply; whereby they
have gone near to confound the very Essence of Truth and Falsehood, of
Right and Wrong...

Jonathan Swift

More than seven years have passed since Kazakhstan joined the Convention on Protection of the World Cultural and Natural Heritage (hereafter, the Convention) in 1994. To date, however, not one Kazakhstani cultural monument or natural area has been included in the World Heritage List.

Endless manipulation of environmental legislation has made it an increasingly ineffective instrument for protecting the environment. How well does Kazakhstan's environmental legislation meet the Convention's requirements, and will its failings become, in fact, an obstacle in meeting the obligations of the Convention?

Human Rights and International Environmental Policy

The Convention should be looked upon, above all, from a human rights standpoint. It is founded upon the acknowledgement of social and cultural human rights, the right to a healthy environment, and the right of access to

natural resources. Access to the global treasures protected by the Convention is of crucial legal significance. These treasures form the core of our civilization, protecting our world from destruction; they create an invisible thread binding together past, present, and future generations.

As mentioned in the Convention's preamble, participating nations state that "the cultural and the natural heritage [of the world] are increasingly threatened with destruction," and understand that the "deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world."

The aforementioned statute of the Convention is in accordance with a number of other international human rights documents. For example, the Ksentini Principles [the 1994 UN Draft Declaration of Principles on Human Rights and the Environment]* emphasize that each individual "has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes... Everyone has the right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area." ("Draft Declaration of Principles...", p. 13). Failure to recognize the rights above is, in fact, an acknowledgment of injustice and discrimination!

From a political standpoint, the Convention can be used as an international instrument for implementing policy of the world community to protect of universal treasures (Convention, Article 5, *passim*). In connection with frequent acts of vandalism on cultural monuments, as well as the pollution and destruction of objects of the world's natural heritage, calls are increasingly heard for tightening international legal norms, and even for the creation of an international court for environmental protection (Cornavin).

In Kazakhstan, the question of any universal treasures has become a stumbling block, whether the term refers to natural or to cultural treasures, or to human rights. While the issue of observing human rights is frequently discussed in Kazakhstan, this discussion bears no fruit. This approach of "talk without action" is characteristic of how the government of Kazakhstan carries out activities on protection of universal treasures as well – actions, because they cannot be called a policy.

Following the worst traditions of the USSR, the Republic of Kazakhstan, to this day, has not adopted the majority of international human rights conventions. By substituting the urgent "papering over" of environmental "holes" for a true environmental policy, the government has not strictly fulfilled its international obligations, without, at the same

time, cutting itself off from the world community – in other words, putting a good face on a bad game.

The Integrity and Preservation of World Heritage Sites

Fortunately, despite the intensive exploitation of Kazakhstan's natural resources, and the pollution and destruction of its environment, the republic's territory still contains natural sites of worldwide importance. It is for the protection of such monuments that the Convention is intended.

Two of the most important criteria for a site's selection for inclusion on the World Heritage List are its integrity and degree of preservation. "Integrity" means that the site should:

- "contain all or most of the key interrelated and interdependent elements in their natural relationships" (criteria i);
- "have sufficient size and contain the necessary elements to demonstrate the key aspects of processes that are essential for the long-term conservation of the ecosystems and the biological diversity they contain" (criteria ii);
- "be of outstanding aesthetic value and include areas that are essential for maintaining the beauty of the site" (criteria iii);
- "contain habitats for maintaining the most diverse fauna and flora characteristic of the biographic province and ecosystems under consideration" (criteria iv) (*Guidelines for Preparing...*, p. 11).

Among the Kazakhstani natural territories nominated for inclusion on the World Heritage List, not all meet the criteria for integrity. For example, the nomination of Ile-Alatau National Park is made more difficult by the fact that, first, its mountain ecosystems are divided by human settlements, fields, recreation areas, and roads extending up into the valleys. Second, the central mountain system of the Zailiisky Alatau, where the Almaty Wildlife Preserve is located, has not been nominated for inclusion together with the park.

The situation with regard to protection of the park's natural areas is even worse. Currently, only remoteness and lack of access, water, or information constitute the best guarantees for their preservation; all other areas are experiencing steadily increasing destruction at the hands of humanity.

Kazakhstan's general prosecutor's office has noted the seizure of land on the territory of the country's national parks, which constitute potential candidates for the World Heritage List (*Guide to the Results of Checks...*). The Akmola Oblast prosecutor's office has uncovered illegal hunting and woodcutting in Kokshetau National Park (*Kazakhstanskaya pravda*, May 30, 2000). However, neither the prosecutor's efforts nor the actions of the

Ministry of Natural Resources and Environmental Protection have been sufficient even to slow the rate of violations.

Together with illegal activities, the preservation of natural areas is undermined, paradoxically enough, by a number of legal acts and amendments to existing legislation. According to amendments to the law “On Specially Protected Natural Territories,” economic activities that were formerly categorically forbidden are now permitted on the territory of wildlife preserves (Article 37). The necessity of such changes is evidently based on the adaptation to a market economy, but in fact it lead to the destruction of the previous system of nature preserves.

Without a doubt, the entire former Soviet system of specially protected natural territories had its flaws, and adapting it to market conditions is necessary, but not at any cost. For instance, one of the World Bank’s recent publications admits that “three new republics of Central Asia – Kazakhstan, Uzbekistan, and Kyrgyzstan – inherited from the Soviet period a model of protected territories that was used throughout the USSR, which was one of the best in the world” (*Transboundary Reserves...*, p. 6). In this case, doesn’t it make sense to retain the positive elements of this system of protected territories, which was “one of the best in the world”? And won’t tampering with the legal framework of this system significantly reduce the chances for Kazakhstan’s natural sites to be included on the World Heritage List?

Statements that the Soviet Union’s protected territories system was excessively strict are not entirely accurate. In a number of the world’s nations – New Zealand and Costa Rica, for example – quite similar conservation regimes exist.** The categories for protected territories employed by the World Conservation Union also correspond in large measure to those adopted in Russia and Kazakhstan (*Guidelines for Preparing...*, p. 89; *Guidelines for Protected Area...*, pp. 17-24).

Over the course of the last few years, the activities of tour group operators have become a serious threat to the integrity of Kazakhstani territories nominated for the World Heritage List. These groups play a significant role in the pollution and destruction of the environment, ignoring the amendments to the Hague Declaration which states that countries “should never forget that they must not strive for profit at any cost” (“Amendments...”, p. 8).

The law “On Tourist Activities in the Republic of Kazakhstan,” adopted July 13 2001, contains only declarative statements on environmental protection. Missing from the 2001 version of this law is the section “Protection of Natural and Cultural Properties of the Republic of

Kazakhstan in the Process of Tourist Activities,” which was present in the 1992 law “On Tourism.” Although Part 2 “State Regulation of Tourist Activities,” of the 2001 law states that environmental protection is a goal (Article 9, point 1, subpoint 2), the law lacks any economic mechanisms to foster rational use of natural resources or environmental protection. References to other legislation regulating tourist activities are also absent. Nothing is said regarding the obligations of tour group companies in environmental protection; there are only vague statements on the obligation of tourists to “preserve the environment” (Article 25). There is no mention of tourist activities at World Heritage Sites, although “the protection of natural and cultural heritage” is proclaimed to be one of the goals of the law (Article 9, point 2, subpoint 2). Perhaps the law’s developers do not hope that such World Heritage Sites might someday exist in Kazakhstan.

Economic and other human activities within protected territories represent no less of a threat to their preservation. Examples include the virtually unregulated vehicle transportation in the Ile-Alatau National Park within the Little Almaty Gorge, which penetrates deep into the park. The damage to plant and animal life, in the opinion of specialists, is enormous, and yet no legal mechanism exists that might prevent and compensate for that loss – even though the law “On Environmental Protection” states that one of the fundamental principles of such protection is “preventing damage to the environment” (Article 3).

These factors, which are by no means restricted to the examples given, represent sufficiently convincing testimony that the existing legislation, even if conscientiously applied, cannot guarantee the necessary level of preservation for potential World Heritage territories.

There are no special laws*** or articles in other Kazakhstani laws for regulating activity on World Heritage Sites, just as there are, as yet, no such sites themselves. It must be assumed that if any sites appear, they will fall under Article 89 of the law “On Environmental Protection,” entitled “International Agreements of the Republic of Kazakhstan in the Area of Environmental Protection.” This Article states that “if international agreements ratified by the Republic of Kazakhstan establish norms other than those contained within the legislation of the Republic of Kazakhstan, the rules of the international agreements will be applied.”

National and Local Resources

Natural resources are divided into national and local spheres, according to their environmental and economic importance to society. In countries with market economies, this division is set in law and strongly enforced.

In Kazakhstan, following the nation's declaration of independence, all resources were tossed together into one statewide pot. As a result, conditions were created for various forms of abuse, corruption and sale of resources, harming millions of people while bringing enormous profit to a select few.

Kazakhstan's forests provide a one such example. They occupy, according to the most optimistic projections, roughly 4.2% of the republic's territory. One would think that in a country where some 66% of the land is subject to desertification, and which suffers from a lack of water, forests would be declared a national resource, and their preservation and expansion would be one of the nation's chief priorities and part of its environmental policy. Instead, the management of forests, which play a crucial role in soil protection and water regulation, are bounced back and forth between the Ministry of Agriculture and the Ministry of Natural Resources. Endless reshuffling of personnel has paralyzed the administration of protected territories and other subdivisions of the Committee on Forestry. Finally, the prime minister has proposed placing the nation's forests under the control of the oblast *akimats* or regional mayors (*Kazakhstanskaya pravda*, June 21, 2001)! It is not clear if such proposals should be chalked up to simple illiteracy or the desire of local bureaucrats to place one of the country's most valuable resources at their own disposal.

Under the Convention, if a country nominates a site for the World Heritage List, it acknowledges not only the national significance of that natural territory or resource, but also its global value as well. How is it possible, then, that Kazakhstan, as a signatory to this Convention, has put into place legislation which allows for the forest land in Ile-Alatau National Park (a park of national importance), including lands under consideration for inclusion in the World Sites, to be managed at the oblast level? Such a contradiction is possible because the law "On Specially Protected Natural Territories" contains only a vague mention of the management and division of such territories into national and local categories, depending on their significance (Article 13, point 1; Article 39, point 2; Article 40-1, point 2; Article 41; and others). However, within the law there is no clear explanation of how the management of a territory should be determined depending on its status or importance, or on the relationship between the park management authorities and local government administrative bodies. The territories of wildlife preserves and national parks, forests, underground resources, valuable wetlands, major lakes and rivers, seashores, and a number of other natural sites are of national importance. However, the lack of a clear division of resources into national, oblast, and local categories invites attempts by local bureaucrats to gain control over those natural

resources that they consider valuable. Other resources, especially plants and animals, regardless of their value, fall under the control of commercial structures. Finally, those resources lacking any value (from the bureaucrats' point of view) are discarded altogether, destroyed, or fall into the hands of foreign biotech companies.

Under such conditions the question arises: who owns these natural resources? Who owns the natural sites which are under consideration for inclusion into the World Heritage List?

Property and the Division of Property and Authority Between Different Branches of Government

The well-known U.S. economist Paul Heine has accurately observed that "pollution is a dispute with regard to property rights" (Heine, p. 339). The same can be said about the irrational use of resources and lack of protection for natural territories. Therefore, in order to encourage decisions on the use and preservation of natural resources to take place at the appropriate level, the authority and rights of possessors, owners, and users of natural resources should be clearly defined. There should be a clear division of state property and of the authority of different branches of government. Limits of the rights of private owners should be clearly defined as well.

Since the rational use and protection of a nation's natural resources assumes a clear division of property and authority between different branches of government, the rights and obligations of property owners must also be fixed by law. For example, in the United States, the U.S. Constitution states that "The Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States" (*Constitution of the United States*, Article IV, 3). In Kazakhstan, the question of property is so murky that even the government agencies are not capable of explaining it fully.

According to the laws "On Land" (Article 18, point 3) and "On Specially Protected Natural Territories" (Article 5, Part 2), plots of land on specially protected natural territories "may not be private property" and "are not subject to privatization." However, five years after the Constitution of Kazakhstan had been adopted, it took the intervention of the Constitutional Council in order to finally reach a conclusion on what is meant by "state property," and who in fact is an owner in the name of the state. According to the Constitutional Council's Resolution No. 4/2, issued March 17, 1999, the executive branch of the government is acknowledged as the owner of state property. The law "On Land" contradicts this resolution, stating that "the right of the state as an owner of land is exercised by state administrative

bodies in accordance with their competency” (Article 16, point 2). The question of the division of authority between ministerial and territorial administrative bodies remains open.

From the point of view of fulfilling the requirements of the Convention, the question of who is the owner of a particular natural resource – the Parliament or the executive branch – may not be of great significance. However, chaos on the issue of property rights has led not only to legal confusion, but also to the actual destruction of natural territories which might be worthy of claiming a place on the World Heritage List.

A striking example, once again, is provided by the situation in the Ile-Alatau National Park. On a narrow strip of land falling within the Almaty city limits and extending deeply (several kilometers) into the park (from the city’s residential areas to the Chimbulak Couloir), a local park has been created, with a total area of 829 hectares. This area includes some 60 hectares of national park land falling inside the city limits. However, this does not mean that this land can be confiscated for private use (see point 6, Article 86 of the law “On Land”). The annual recreational volume envisaged for this “mini-park” is 13,804 people, which is laughable in light of the presence next door of a city of over a million. A similar number pass through the given territory in a single week, but most of them seek recreation within the national park itself. In this fashion, the large flow of auto transport on the roadways of the protected park, combined with the huge number of visitors, will cause serious harm not only to wildlife within the national park, but to its economic status as well, given that the “mini-park” will exist, in effect, at the expense of the national one.

In this case, neither the administration of the national park, nor the Committee on Forestry, nor the Ministry of Natural Resources and Environmental Protection, nor the cabinet has put itself forward as owners possessing the authority to stop the pollution and destruction of Ile-Alatau National Park, a potential candidate for the World Heritage List. And this is no accident. To date there is no legal act regulating land use on the park, nor have its full boundaries been marked out, although though the government envisioned this when the park was first organized. No system has been developed for dealing with those making private use of land within the park’s territory. Where is the owner who cares about this national treasure?

The flaws of Kazakhstan’s environmental legislation constitute a serious obstacle to the Convention’s fulfillment. **Kazakhstan lacks an environmental policy that operates not according to the interests of one group of bureaucrats**

or another, but on the basis of the observation of human rights and international legislation on the protection of nature, including the World Heritage Convention.

* * *

* On May 16, 1994, an international group of experts on human rights and environmental law gathered at the UN's representative offices in Geneva to develop the first-ever Draft Declaration of Principles on Human Rights and the Environment.

Madame Fatma Zohra Ksentini, Special Rapporteur on Human Rights and the Environment for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, conducted more than five years of research on the interrelationship between human rights and the environment. Mme. Ksentini presented her final report to the Sub-Commission in August 1994, with the Draft Declaration as an appendix. Her report noted that the Draft Declaration is capable of serving as the basis for an official international legal document on human rights and the environment.

** The territory of the Snares Islands (New Zealand), a World Heritage Site since 1998 and a "strictly protected natural area" (*Guidelines for Protected Area...*, p. 29), is closed even to visitation by tourists.

*** In Russia, a special law has been adopted regarding one World Heritage Site: Federal Law no. 94-FZ "On the Protection of Lake Baikal," passed May 1, 1999. "The present Federal Law determines the legal basis for the protection of Lake Baikal, which is not only a unique ecological system of the Russian Federation, but a natural site of world heritage."

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THE REALITY OF TROPHY HUNTING IN KAZAKHSTAN

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In September 2000, the government of the Republic of Kazakhstan published a decree granting foreigners the right to hunt and capture two endangered species of birds, the saker falcon (*Falco cherrug*) and houbara bustard (*Chlamydotis undulata*). In reality, not only these species, but many other endangered species are available for hunting in Kazakhstan, such as the Turkestan red deer (*Cervus elaphus bactrianus*), djeiran (*Gazella subgutturosa*), and two sub-species of mountain sheep (*Ovis ammon ammon* and *O. ammon collium*) (Astana, 2001).

The most direct effect of trophy hunting lies in the fact that foreign hunters pay to kill animals not for meat, but for their beautiful horns. This trend implies, first of all, that hunters primarily seek the largest and most beautiful individuals – herd leaders – and secondly, that they hunt before or during the opening of the sparring season, when males are at their peak of beauty. The result of such hunting is that the new leaders of the herd are no longer the largest and strongest, but those that do not attract hunters' bullets. In other words, the herd undergoes constant degradation. Many species are actually becoming physically smaller, as larger and more robust individuals are singularly removed from the gene pool (Bekenov, A.B., Baidavletov R.Zh., et al., 1999; Bekenov, A.B., Plakhov K.N., 1999). A large male Pamir argali (*Ovis ammon polii*), maral (*Cervus elaphus maral*), or Siberian ibex (*Capra sibirica*) in Kazakhstan is now a great rarity. Indeed, eager big game hunters are met with increasingly smaller trophies.

Despite the obvious need for scientific research to determine an ecologically safe method for conducting managed hunting, however, executive authorities in Kazakhstan have ignored the voices of well-informed conservation scientists. To date, neither Kazakh nor international scientists have been able to determine precisely how large the population of a species must be in order to ensure its long-term preservation (Viable Populations for Conservation, 1987). In the meantime, it seems that the government of Kazakhstan has solved this puzzle, ignoring the opinion of professionals and zoologists. The Institute of Zoology recently prepared a study on the biological basis for removing endangered species from the wild in Kazakhstan, in which experts set the maximum quota for the saker falcon at ten young individuals. The Committee of Forest, Fish, and Hunting Management made the same recommendation. Legislation on hunting the saker falcon, however, set the quota at 200 individuals.

The Disappearing Saker Falcon

The saker falcon (*Falco cherrug*), a close relative of the peregrine falcon and numerous kestrels, was once widespread throughout steppe and mountain regions of Europe and Asia. A reduction in habitat and a decline in the population of ground squirrels and similar prey led to a sharp decline in the population of saker falcons in Europe, but until recently, the Altai-Sayan region held one of the last stable populations of these endangered birds. Trapped during migration or taken from their lofty nests in cliffs or high trees, saker falcons bring a high price on the black market, where they are valued as hunting birds. Although Kazakhstan once had a healthy population of over 2,000 nesting pairs, each year it loses up to 1,000 saker falcons. In Russia, airport customs officials have reported seizing as many as 700 saker falcons in a single year as people attempted to exit the country with the birds.

Even worse, the authorities who create such decrees display a poor understanding of the complexities involved in hunting management. For example, licenses for so-called “wild cats” sell for nearly \$30, while a license for a “lynx” sells for about \$200 (Astana, 2001). Meanwhile “wild cats” could be any of a number of species that live in Kazakhstan, including endangered species like the sand cat (*Felis margarita*), manul (*Felis manul*), and caracal lynx (*Felis caracal michaelis*). Two subspecies of lynx live in

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Kazakhstan, including the Turkestan lynx (*Felis lynx isabellinus*), a cat listed in the Red Data Book.

A license for any “goose” sells for about \$3.50. Meanwhile, four bird species included in this definition are endangered in Kazakhstan: the swan goose (*Anser cygnoides*), red-breasted goose (*Branta ruficollis*), whooper swan (*Cynus cygnus*), and Berick’s swan (*Cygnus bewickii*). But why does a “goose” cost so much less than the abundant green pheasant (*Phasianus colchicus*)? Words like “duck” and “sandpiper” open up fields that are just as broad for hunting rare and endangered species. In essence, no distinction is made between non-threatened species and endangered ones.

In and of itself, big game hunting can be a positive element in economic development and nature protection. Various forms of safaris have actually helped increase the numbers of certain endangered species. Managed hunting brings considerable income for countries like the United States, Canada, and Finland. In the 1960s, after the onset of independence and the choice to make ecotourism a priority in nature protection, zoology as a science and special biology teams began to grow dynamically in certain African countries (Grzimek, 1969).

This rich international experience shows that rationally organized use of wild animals can be a lucrative branch of the national economy, creating numerous jobs and stimulating the growth of science. At the current time, however, the government of Kazakhstan is ignoring this experience, choosing instead an irresponsible and non-sustainable way of using valuable animal species.

The government of the Republic of Kazakhstan, in recent years, has systematically and successfully destroyed the Kazakh school of zoologists. This school has achieved many significant successes – the restoration of the saiga herd (*Saiga tatarica*) from near extinction to millions of individuals; and the protection of the kulan, or Asian wild ass (*Equus hemionus*), djeiran, Przewalski’s horse (*Equus caballus*), and snow leopard (*Uncia [Panthera] uncia*); the acclimatization of the muskrat (*Ondatra zibethica*) to Kazakhstan, the economic effect of which was immeasurably greater than all of the achievements by modern creators of “macroeconomic stabilization”; victory over bubonic plague and malaria; and many other deeds that raised the Kazakh school of zoologists to the international level. In ten years of independence, however, the number of employees of the Institute of Zoology has been cut by almost two-thirds, and the remaining staff receive miserly salaries and lack the funds to carry out full-fledged research. After all, why do we need specialists who might report to the public about the scale of theft of the country’s natural resources? This tactic

has nothing in common with the strategy of sustainable development, care for future generations, or a number of international conventions.

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HUMAN RIGHTS AND RADIOACTIVE WASTE

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Radioactive Money

The storage of radioactive waste imported from other countries first attracted the attention of the general public in Kazakhstan when the state-owned company Kazatomprom “attempted, through a group of parliamentary deputies, to initiate a law to allow the import of low and mid-level radioactive substances” (*Kazakhstanskaya pravda*, Oct. 10, 2001).

The need to amend existing legislation was based on the possibility “of using extra-budgetary sources to finance a series of measures for legalizing the import and storage of radiation,” which, in turn, would lead to “an improvement in socioeconomic conditions” in the country.

Even during the years immediately following the collapse of the Soviet Union (1991–1997), when Kazakhstan’s economic situation was considerably worse than it is now, the question of obtaining money by such means was never raised on an official level. Much to the contrary, in 1992, for example, a resolution of the Cabinet of Ministers (no. 1103, December 31, 1992) was issued, which stated that, “The State Committee on the Economy and the Ministry of Finance of the Republic of Kazakhstan shall, in developing their annual forecasting and budget plans, allocate full financing of environmental protection measures to promote radiation safety”.

Furthermore, in 1997, the laws “On the Use of Atomic Energy” and “On Environmental Protection” were adopted, both of which prohibit the import of radioactive waste from foreign countries (Article 3, point 1, and Article 57, respectively). The law “On Environmental Protection” largely complies with Article 42 of the 1991 “Law on Environmental Protection in the Kazakh SSR.”

It is ironic that, given significant economic improvements over the last 5 years (“On the State of the Nation...”), and just as the long-awaited revenues from the extraction of oil have begun to materialize, the position of Kazakhstan’s ruling elite on the import and storage of foreign radioactive waste has completely reversed itself. In order to solve the nation’s problems, the severity of which was already recognized at the beginning of the 1990s, the government suddenly and urgently requires money, which, in the opinion of some parliamentary deputies and the leadership of Kazatomprom, must be earned at any cost. Is this not evidence that the government’s 1992 resolution and other, earlier legal acts, are simply not being fulfilled? As a result, new doubts arise: What is the guarantee that money obtained from the import and storage of radioactive waste from foreign countries would in fact be used to improve radiation safety in Kazakhstan?

Environmental and Economic Policy

What on earth can explain such drastic shifts in direction?

In the last ten years, no cohesive environmental policy has been developed and ratified by Parliament in Kazakhstan. At the same time, the country’s economic policy continues to increasingly focus on exploiting the country’s natural resources, which, in turn, will continue to lead to distortions in Kazakhstan’s economic development. The government’s about-face on the issue of the import and storage of foreign radioactive waste can be attributed to the siphoning interests of specific ministries, agencies, and commercial structures.

However, one unexpected “obstacle” interfering with the unlimited exploitation of natural resources has proven to be... the country’s national legislation! In order to overcome this “obstacle”, various ministries, agencies, commercial structures, and transnational corporations have begun to put pressure on legislators in order to shape laws to meet their immediate needs.

It is for these reasons that the 1997 law “On Environmental Protection” has already been amended four times (and a proposition to amend it a fifth time has been made). The removal of “inconvenient” statements from environmental legislation is nothing out of the ordinary; other laws have been frequently changed in a similar fashion. This tendency was noted by the Constitutional Council in its address to Parliament on March 16, 2001, which states that “...legislation is not always developed systematically... consistency and uniformity of the law has not been achieved.” The Council’s address further states that “There are many problems with the quality of laws, including contradictions within and among the laws themselves and frequent and unjustified amendments...” (p. 9).

As a result of new amendments introduced into environmental legislation over the past four years, economic mechanisms for the rational use of natural resources and protection of the environment, which were in place during in the first years of independence, have been destroyed:

- The Fund for the Protection of Nature has been liquidated, which confirms once again the conclusions of the World Bank that the effectiveness of the work of environmental funds "... depends on the capable administration of the funds and the state of national regulation of legal enforcement." (*Draft...*, point 121);
- The new Tax Code legalizes accelerated amortization for resource-extracting industries, creating a hidden form of subsidies for commercial companies – above all for the oil industry (Article 110), which effectively stimulates the exploitation of natural resources. Under the former 1991 law "On Environmental Protection in the Kazakh SSR" (Article 32), accelerated amortization was also used, but to stimulate environmental protection activities. This Article (whereby accelerated amortization was used to stimulate environmental protection activities) was stricken from the 1997 law "On Environmental Protection";
- Payments for the protection and restoration of natural resources were not included in the new Tax Code (Article 62);
- The question of reparation of environmental damage inflicted by previous natural resource managers/users failed to receive due clarification in the 1997 law "On Environmental Protection" (Article 51, point 3);
- The role of public environmental expertise was effectively reduced to zero in 1997. According to the 1997 law "On Environmental Protection", the conclusions of public expertise can provide no more than information and recommendations.
- Unclear ownership rights, including the right of ownership of natural resources, has thus far presented a serious obstacle to the development of a market economy. This fact is noted in the World Bank's draft environmental strategy for Europe and Central Asia. In particular, the Bank's draft states that in order to promote sustainable economic growth, "increased transparency of the legal and regulatory base, particularly with regard to changes in property rights, the price of natural resources, export-import licenses, waiving of fines for pollution, and so forth" is needed (point 65).

All of the changes listed above, combined with the failure to observe existing law, have led to a redistribution of monetary flows and contribute

to a deficit in funds to finance environmental protection activities. It has been proposed that this “deficit” be compensated using the planned revenues obtained from the import, storage, and burial of radioactive waste. Our republic’s natural environment and resources have become small change in the battle to compete in international markets, nothing more than a carrot to attract foreign investment. The concept of “environmental policy” has been erased from Kazakhstan’s political lexicon.

Such deliberate destruction of the economic mechanisms that promote the rational use of natural resources and protection of the environment clearly demonstrate how a distorted focus on economic priorities (one which ignores the connection between the economy and the environment), gives rise to new and even more difficult problems.

Dubious Priorities

In describing future plans for the country’s development, the ruling elite has staked their hopes on Kazakhstan’s rich natural resource base, although it would be more correct to speak of the country’s rich mineral resources. Not a single sensible-minded politician can be found who would not admit that Kazakhstan faces a plethora of severe environmental problems: soil degradation, insufficient water resources, chemical pollution, desertification, and others. The leadership’s decision to count on Kazakhstan’s rich natural resources as a means for economic development has thus long raised doubts among specialists.

In the opinion of experts from the World Bank, “Despite Kazakhstan’s wealth of natural resources, environmental problems may limit the country’s existing potential for economic growth” (*Kazakhstan: Priority Directions...* p. iii). “Even such resource-rich countries as Kazakhstan, Turkmenistan, and Uzbekistan may become the victims of instability, which will arise if revenues from the use of those resources are not directed toward social development,” United Nations Development Program researchers assert (Verkhailen et al., p. 8).

It would seem that such critical assessments should be taken into account, and the fact that (even in the ninth largest country in the world) land and natural resources are finite should also be taken into consideration. An environment beneficial for life has become an increasing rarity in our republic, shrinking like “pebble-leather.”* Alas, however, no attention is paid to the critics, and we have become witnesses to a new approach to land use in Kazakhstan: the development of a plan for burying foreign waste on Kazakhstan’s territory. Are there really no “better” places on earth for burying foreign radioactive waste than in Kazakhstan!?

Human Rights

Finally, human rights no longer remain an “obstacle” to the adoption of such decisions. Many parliamentary deputies, members of government, officials, entrepreneurs and specialists, consider socioeconomic and environmental problems without paying attention to human rights. At the same time, the acknowledgement, observance, and defense of human rights are a necessary precondition for the development of democracy.

Adherence to international law on this issue does not bother our leaders, either. The “softening” of laws and the “...removal of formal limitations existing in legislation” proposed by a group of deputies, mean that Kazakhstan’s acceptance of international obligations in the sphere of human rights is now no more than lip service. The 8th, 11th, 14th, and 15th principles of the Rio Declaration, which call, in particular, for states to pass effective legislation on the environment and implement broad measures for its protection, are ignored. The fact that all of this is occurring even as Kazakhstan prepares to take part in the UN’s “Rio 92+10” conference on sustainable development (Johannesburg, 2002) is highly ironic.

On October 23, 2000, Kazakhstan ratified the Aarhus Convention on access to information, public participation in decision-making, and access to legal proceedings on environmental questions. Joining this convention further obligates the country’s leadership to make decisions whether or not to import and store foreign radioactive waste only with the wide participation of the public in the process. Furthermore, the population and public should receive all information needed “for making decisions” in a form “useful for decision-making” (*Agenda 21*, Article 40). Any other method of decision-making violates Articles 6 and 7 of the Aarhus Convention and Principle 10 of the Rio Declaration, which states that “environmental issues are best handled with the participation of all concerned citizens...”

Finally, it must not be forgotten that Kazakhstan signed the Charter for European Security, adopted by the OSCE in Istanbul in 1999. In doing so, Kazakhstan took upon itself the obligation “...to counter such threats to security as violations of human rights and fundamental freedoms...” (Article 19).

At a Crossroads – Again

Discussion of plans for the import, storage, and burial of radioactive waste on the territory of Kazakhstan once more demonstrates the conflict between two contrasting “visions” for the republic’s socioeconomic development.

The first vision can be defined as “market extremism.” Its essence lies in the following characteristics:

- an orientation toward short-term economic benefits;
- an economy aimed at obtaining profit at any cost (through the import and storage of foreign radioactive waste, for instance);
- the use of natural riches as bargaining chips in the battle for the international market (for example, Kazakhstan possesses a large territory, on which foreign radioactive waste can be safely buried);
- disregard for human rights, violation of the law, international obligations, and the country’s international prestige (for example, national legislation is “a formal limitation,” and no more).

The second model is aimed at the creation of a law-guided state, based on the observance of human rights and rule of law, the observation of international obligations and use of market mechanisms to promote sustainable development.

Officially, our republic has proclaimed its devotion to the idea of a state guided by law. In fact, however, a battle is underway between the two aforementioned models of development.

On October 19-20, 2001, a conference entitled “The Import and Burial of Radioactive Waste in the Republic of Kazakhstan: A Dialogue Between Government and Civil Society” took place in Almaty. The conference was organized by the OSCE, the state nuclear power company Kazatomprom, and Tabighat (Nature) Ecological Union.

The conference participants unanimously acknowledged that Kazakhstan already has sufficient resources for the burial of its own radioactive waste. However, neither Parliament, nor the government, nor Kazatomprom can control the flow of these resources – a fact that, incidentally, is a secret to no one. Participants at the conference listed corruption, the shadow economy, and the flawed tax system as reasons for the current lack of control and financial transparency. Rather than take radical measures to solve the problem, however, government officials proposed earning money another way. Easier to import waste than remove corruption! The acknowledgement of this fact was the main outcome of the conference.

The high level of corruption in Kazakhstan is also confirmed by the findings of the international organization Transparency International, carried out the beginning of 2001. The findings of Transparency International’s study list of 91 countries, ranked according to an “index of perception of corruption.” The first three places were occupied by Finland, Denmark, and New Zealand, possessing minimal corruption. Kazakhstan

shared the 71st slot with India, Honduras, and Uzbekistan (“Transparency Kazakhstan Presents...”). In addition, in the course of gathering data for the study, it was established that the higher the level of corruption within a country, the more significant the level of pollution and environmental destruction there (*Panorama*, Feb. 9, 2001).

Thus, a discussion on importing and burying radioactive waste clearly shows that this issue, which at first glance may seem to be a discrete one, is in fact connected to an entire series of crucial and unresolved political, socioeconomic, and environmental problems of our republic. Efforts by government officials to present the problem as a purely scientific one and to address it through “small” changes to existing legislation, only prove yet again the failure to respect the people’s right to live in a healthy environment and their right to access to natural resources, information, and participation in making environmentally significant decisions in Kazakhstan.

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- * *Pebble-Leather* is the title of a novel by the French writer Honore de Balzac. In the given context, the expression means that an economy oriented toward raw-materials extraction leads to the irreversible disappearance of natural resources. Such an economy brings immediate gains, but with the exhaustion of natural resources, the basis for the country’s sustainable development in the future vanishes as well – a symbol of the tragically irrational use of the resources needed for life.



KAZAKHSTAN'S OIL – CREATING A NEW PARADIGM FOR OIL AND SOCIETY

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For the people of Kazakhstan, the large oil and gas reserves identified in the Caspian region offer a double-edged sword indeed. While the development of these reserves can bring many socioeconomic benefits, such development will, with certainty, bring with it a constellation of negative impacts as well. The prospects for petroleum development pose both opportunity and threat for the region. The public policy challenge over the coming decades then for Kazakhstan will be to maximize the positive impacts and minimize the negative impacts of oil and gas development, both for the short-term and long-term.

Although the history of oil and gas development in the region is rife with poorly planned and operated fields, reckless corporate behavior, environmental degradation, and corruption, this history need not repeat itself in shaping future oil and gas economics in the region. There are many examples throughout the 20th century of how oil development helped societies become more independent and prosperous, and many in which oil simply drove a society and culture into ruins. It is important to point out that no single country has ever really gotten it right with oil – anywhere. Every oil and gas development has had its problems, in one form or another, even in the progressive democracies of Norway, the United Kingdom, and the United States.

An example of this is on Alaska's North Slope in the U.S., where a 25 billion barrel oil field was discovered in 1969 – the largest ever found in North America – opening a Pandora's Box of opportunities / problems in America's "Last Frontier." As the field was developed, a corrosive combination of greed, ignorance, and political power was set in motion by

the windfall profits from the oil. To many, the economic boom that ensued was a dream-come-true – wealth, political power, lucrative construction contracts, new roads, shopping malls, civic centers, etc. But to others, the sudden creation of enormous public wealth created by oil money heralded a much darker era – one which saw population increase, over-exploitation of fish and wildlife resources, organized crime, substance abuse, chronic environmental damage, corruption, and the Alaska way of life changed, perhaps forever. Historian John Strohmeier, writing on the effects of the Alaska North Slope oil money, observed the following:

“This torrent of money ignited a reckless state spending binge unprecedented in this nation’s history. Many of the expenditures improved Alaska’s primitive infrastructure, and the state had the foresight to create a permanent savings fund. But along with the benefits came abuses. Alaska became the feasting ground for ambitious and often naive empire builders. Bribe-paying developers, greedy labor bosses, and professional racketeers thrived while the boom lasted. Lawyers, bankers, and crafty carpetbaggers exploited the riches without shame. Corruption flourished, the rule of law suffered, the wilderness shrank. Intoxicated by oil revenues, the state lost sight of its role as a regulator of the industry that was enriching it. The oil companies took full advantage. They rearranged the legislature to their liking with hefty campaign contributions. Only after the largest oil spill in the nation’s history did the extent of this unholy alliance begin to surface.”

The March 24, 1989 grounding of the super-tanker *Exxon Valdez* in Alaska spilled over 11 million gallons (40,000 tons) of Alaska North Slope crude oil into Alaska’s Prince William Sound, becoming one of the most significant man-made environmental disasters in human history. The resulting spill covered over 10,000 square miles of Alaska’s coastal ocean, and oiled some 1,500 miles of some of the nation’s most productive and ecologically sensitive shoreline – three national parks, four national wildlife refuges, a national forest, five state parks, four state critical habitat areas, one state game sanctuary, and many ancestral lands for Alaska Natives. Though not the largest in terms of volume spilled, the *Exxon Valdez* spill killed more marine organisms than any other oil spill on record. Hundreds of thousands of seabirds, marine mammals, fish, intertidal and subtidal invertebrates and plants in the coastal ecosystem were killed by the acute effects of the oil, and chronic injury was and continues to be serious as well. Human communities dependent on the marine ecosystem for their livelihood were seriously impacted, showing increased indices of stress, substance abuse,

domestic problems, and other anxiety-related illnesses, giving rise to what sociologists described as “corrosive communities” in the spill region. The economic disruption caused by the spill was enormous as well.

Today, 13 years later, government science confirms that most of the natural resources injured by the 1989 spill have still not recovered. The “2001 Status of Injured Resources and Services” – which is the government’s official position on the condition of the ecosystem injured by the *Exxon Valdez* oil spill – lists only two injured species as fully *Recovered* – bald eagles and river otters. Listed as *Not Recovering* are loons, three species of cormorants, harbor seals, killer whales, and pigeon guillemots; listed as *Recovering (Not Recovered)* are black oystercatchers, murre, marbled murrelets, blue mussels, herring, pink salmon, red salmon, sea otter, intertidal habitat, subtidal habitat, and archeological sites. Resource services listed as having not recovered include subsistence, passive uses, recreation and tourism, and commercial fishing. The litigation surrounding the spill is ongoing, and there is still a significant amount of *Exxon Valdez* oil in beach sediments in the region. Some scientists have recently suggested that the Prince William Sound ecosystem *may never recover* to pre-spill conditions. Ecologically, socially, and economically, the *Exxon Valdez* oil spill was, and continues to be, an enormous catastrophe. Beyond the actual acute and long-term damage caused, the spill became a powerful symbol across the world for the potentially tragic environmental consequences of corporate recklessness. As such, the *Exxon Valdez* has an indelible place in history, alongside other totemic industrial disasters such as Chernobyl and Bhopal, and serves as a poignant example of the *true costs* of oil.

The story that is normally told of large-scale oil and gas projects is that they provide great wealth and positive benefits. Indeed, the results are almost always extraordinary, but they can be as devastating as they are beneficial, even without the recipients knowing it at the time. If not properly managed, oil development can be as much a curse as it is a blessing. One of the founders of OPEC, Juan Pablo Perez Alfonso from Venezuela, who in 1960 had enthusiastically predicted that oil and OPEC would usher in a historic new era of prosperity for his country, sounded quite different just 15 years later:

“You think we are lucky. I don’t think so. We are dying of indigestion... I call petroleum the “devil’s excrement.” It brings trouble. Look around you. Look at this locura – waste, corruption, consumption, our public services falling apart... And debt, debt we shall have for years. We are putting our grandchildren in debt.”

Rather than creating the great, new civilizations that had been touted by supporters, petroleum development around the world has often resulted,

to a varying extent, in disintegration of traditional communities, social dysfunction, crime, runaway inflation, consumption, flagrant abuse of power, wasteful government spending, and damage to the environment – all examples of decay rather than development. Even from a strictly economic standpoint, the cases of Algeria, Ecuador, Indonesia, Nigeria, Trinidad and Tobago, and Venezuela provide examples of great expectations from oil followed by great disappointment. Many countries simply became intoxicated by oil and the revenue it produced, a syndrome that became known as “Dutch Disease”, after its spread in the 19th century by Royal Dutch/ Shell. Kazakhstan can – and must – avoid these mistakes.

An old proverb suggests that good judgement comes from experience, and experience comes from bad judgement. With this in mind, the challenge for Kazakhstan will be to apply the experience and lessons of history – the many bad judgements made there and elsewhere – as fully as possible in building a model, genuinely prosperous economy from its petroleum resources – an economy that is just, equitable, clean, safe, environmentally positive, and truly sustainable. Indeed it is possible that Kazakhstan can set the standard and create a new paradigm for oil and society in the 21st century – one that can be emulated throughout the world. To achieve this broad objective, the government and citizens of Kazakhstan will have to be vigilant with regard to all aspects of oil and gas development over the coming decades – leasing, exploration, development, production, transportation, refining, marketing, revenue collection, regulatory oversight, etc.

Toward this end, several broad issues need to be considered seriously by government policy makers, the public, and the oil industry. This paper briefly discusses the following: where to allow petroleum development; a Best Available Technology standard for all oil and gas operations; oil spill prevention and response preparedness; public process and the establishment of a Caspian Regional Citizens Advisory Council; environmental monitoring; corporate profiling; the establishment of an equitable petroleum fiscal regime whose practices help the citizens of Kazakhstan to control their own destiny; rate of reserve extraction; and financial liability. In such a broad discussion, it is important not to “miss the forest for the trees” – that is, to focus too much on any single issue to the exclusion of others. The challenge for Kazakhstan is to create the most equitable and environmentally sound petroleum development in the world, and with that in mind, everything should be on the table for discussion and consideration.

Where to Allow Petroleum Development

The first broad policy issue that must be considered is where oil and gas development should be allowed and where it should not – essentially a

zoning issue. There may be areas containing commercial-sized reserves that the people of Kazakhstan nevertheless will desire to keep free from the large-scale industrial development that would be necessary to extract the reserves. Such desires can be based on legitimate concerns for disruption to important ecological areas, critical fish and wildlife habitat, cultural areas, and safety or aesthetic issues. This is an issue that has to be addressed openly, fully, and honestly by government and industry. Such deliberations are often difficult and contentious (as is our current dispute in the U.S. regarding whether to allow oil and gas operations in the Arctic National Wildlife Refuge in Alaska, or in the waters of the Outer Continental Shelf). But if there are areas of Kazakhstan that the public and scientific community feel should be left off-limits to the large scale disruption caused by oil and gas development, these need to be evaluated very carefully and set-aside accordingly by government policy-makers.

In the language of the U.S. federal administration, the process is called “Area Identification”, whereby areas of hydrocarbon potential are identified, and then “Subarea Deferrals” are excluded from leasing based largely on environmental and socioeconomic concerns identified in the Environmental Impact Statement (EIS) process. In addition to the EIS information, deferral of certain areas can be based on concerns raised by state governors, non-governmental organizations, other industries, and the scientific community. Also, the U.S. Congress designates areas to be deferred from petroleum development, which it has done for many federally protected areas, including national parks, wildlife refuges, marine sanctuaries, and so on. Kazakhstan and the other Caspian nations should institute a region-wide process of identifying those areas that should remain off-limits to the development of petroleum resources, and so designate those areas.

Best Available Technology (BAT) Standard

The standards applied by government and industry for petroleum development – for exploration, production, pipelines, shipping, refining, etc. – should be the highest in the world, or what is commonly referred to as Best Available Technology (BAT) Standards. The citizens of Kazakhstan and (the other Caspian states) deserve this, and should insist upon this. You should remain vigilant against the traditional double standard for which transnational oil companies are so famous – giving one area higher protection and technological standards than another. These companies can be expected to offer to implement the lowest and least expensive standards they think they can get away with over time, all the while leading the local citizenry to believe that this is the best they are capable of delivering, and all that is necessary. To the companies, this is a simple business calculation,

weighing the “low” statistical probability of a catastrophic incident against the cost over time of implementing the highest possible standards. The citizens of Kazakhstan need to intervene in this corporate decision-making to convince the decision-makers that nothing less than BAT will be acceptable, and that anything less will actually end up costing the companies more in the long run (see financial liability section below). Further, as BAT will continually evolve and improve over the coming years, the companies operating in Kazakhstan and the Caspian should be required to continually upgrade their infrastructure, equipment, and operations to keep pace with the ever-improving BAT standards globally. This should be a condition of their leases and permits to operate. The status of Kazakhstan’s oil and gas industry as measured by a global BAT standard should be periodically assessed by independent consultants familiar with the state of petroleum BAT throughout the world.

Oil Spill Prevention and Response Preparedness

Kazakhstan should provide leadership in the Caspian Region in the arena of oil spill prevention and response preparedness. Again, the Best Available Technology Standards should apply. An independent and authoritative group, with scientific and engineering expertise and public involvement, should conduct a Comprehensive Risk Assessment for each component of the petroleum system – production, transportation, etc. This Risk Assessment should include an evaluation and modeling of the present system to estimate statistical expectations of accident frequencies, structural failures, fire and explosion, human errors, and projected oil outflows. A detailed evaluation of Risk Reduction Measures, including such issues as human and organizational performance, internal corporate vigilance, ship and pipeline construction standards, production methodologies, transportation routing, oversight, etc., should be conducted. An *Oil Spill Prevention Plan* should be implemented accordingly, to provide maximum safeguards against spills. Similarly, but separately, an *Oil Spill Contingency Plan* should be developed using BAT standards globally. This should include the establishment of spill response planning standards that industry are required to meet (i.e., to recover 300,000 barrels of oil spilled within 72 hours, etc.); a well-trained spill response organization; sufficient equipment on-hand, such as booms, sorbents, skimmers, storage barges, and so forth; chemical dispersants on-hand and pre-established protocols for their use; offshore firefighting capabilities; surprise oil spill response drills conducted by government authorities; contingencies for wildlife protection and rehabilitation, and so forth. Clearly, there is need for regional coordination regarding oil spill prevention and response. A regional response facility or

facilities should be established. And, an independent team should assess the oil spill prevention and response system for Kazakhstan and the Caspian basin, and make recommendations regarding safety improvements

Public Process – A Caspian Regional Citizens’ Advisory Council

Even in democracies, the conventional relationship between government, industry, and the public in managing petroleum development is almost universally dysfunctional. Industry manipulates government administrative and legislative process, government allows itself to be manipulated either intentionally or otherwise, and the public generally pays little attention unless its own interests seem to be threatened. This sets into play a very dangerous dynamic with potentially serious and long-term consequences. The result of this dysfunctional relationship is that the environment, social justice, equity, and sustainable economic progress all suffer. Even in a democracy, government agencies and legislative bodies do not necessarily operate solely on behalf of the public. Experience shows that many government agencies that were ostensibly established to protect the public interest eventually became tools of the very industries they were to regulate, and many government personnel and agencies seem more intent on *servicing* the industries they were supposed to *regulate*. In many cases, government regulation has come to favor industry at the expense of the consumers and citizens it was supposed to protect. In western democracies, this pattern is nowhere more evident than in the government relationship with the petroleum industry.

One reason why this occurs is that public or consumer interests are generally poorly organized, poorly funded, and short-lived. Thus, serious issues are easily “captured”, controlled, and ultimately muted by well-organized, well-funded corporate interests. The public then simply goes “back to sleep” with the false sense of security provided by the illusion that government will protect their interests. There are even handbooks that teach industry representatives exactly how to manipulate government policy – invite and thus control regulation; use information strategically by leaking carefully selected facts or by burying agencies and the public in piles of irrelevant and highly technical material; use litigation strategically to delay adverse regulatory decisions; lobby agencies effectively with social events and by developing close personal relations with government officials; subtly co-opt the experts by hiring them as advisors or consultants to eliminate opposing expertise; play one agency off of another; offer high-paying industry jobs to government regulators from whom you need a favorable decision; etc. And of course one of the most prevalent methods by which industry manipulates government policy in democracies is in the form of

substantial financial contributions to political campaigns. Such campaign contributions essentially buy access and influence over elected officials once they are in office. Petroleum companies are exceedingly good at this game. They take great pride in their abilities to manipulate government policy toward their own selfish interests.

In an effort to break this dysfunctional dynamic between government, oil industry, and the public in Alaska, we formed and secured federal Congressional authorization for two Regional Citizens' Advisory Councils (RCACs) – one for Prince William Sound, and one for Cook Inlet. The concept is to empower and finance, at industry expense, local citizens to oversee the behavior and performance of both government and the oil industry. The groups are composed of citizens' groups, including commercial fishermen, environmentalists, indigenous peoples, municipalities, business owners, and so on. The Prince William Sound RCAC gets between \$2 million and \$3 million each year from the Trans-Alaska Pipeline System owners with which to conduct its oversight work. It has a professional staff of 15, a volunteer Board of Directors, various committees to conduct research and recommend policy direction to the Board. All of the RCAC's operations are public.

These groups have been the critical element in the dramatic improvement of the safety and integrity of the petroleum operations in Alaska – they have improved the oil spill prevention and response system to be the best in the world, improved government vigilance and oversight, and engendered a level of openness and trust between the industry, government, and the public never seen before in Alaska. The \$2 - \$3 million / year budget provided by the oil companies for the one group has paid for itself many times over in helping to avert additional catastrophic failures in the system.

It is essential that Kazakhstan establishes a Kazakhstan Citizens' Advisory Council to oversee all petroleum operations in the country, and then together with citizens of other Caspian states establish a Caspian Regional Citizens' Advisory Council. The importance of these citizens' councils is paramount – they are not government, they are not industry – they are established and operated by and for the citizens of the region. Modeled after the Alaska RCACs, the Caspian citizens' councils should be funded either directly by petroleum companies and consortia (OKIOC, AIOC, etc.), or, better yet, by government revenues from petroleum royalties and taxes, but should otherwise operate entirely independently. Management should be elected and broadly based, have a salaried staff, board members should receive nominal salaries for service performed, and the Councils should have sufficient budget and authority to hire experts and researchers and to examine relevant industry and government

information and documents. The citizens' councils should provide aggressive oversight and advocacy along many of the lines discussed in this document – where to allow development, rate of reserve extraction, Best Available Technology standards, oil spill prevention and response, legal liability, environmental monitoring, regulatory reform, petroleum revenues and taxes, etc. They should also have a voice in the choice of export routes and transportation methodologies.

The Citizens' Advisory Councils would essentially become the fully engaged voice and advocate for the citizens of the region with regard to all issues in petroleum development. It should be remembered that it is actually the citizens of Kazakhstan and the Caspian region who should control the exploitation of the petroleum resources there – not the oil industry.

Environmental Monitoring

It is imperative that all petroleum projects proposed in the region submit to a rigorous, full, comprehensive environmental impact assessment, producing an Environmental Impact Statement (EIS) for review by the public, the RCACs, NGOs, and the governments. These EISs should, at a minimum, detail the proposed development action, alternatives to the proposed action, the affected environment, including the physical, ecological, and socioeconomic environment; possible environmental consequences of the various alternatives; and a detailed assessment of the cumulative impact of all developments together in the Caspian region. The assessments should be prepared by the appropriate government regulatory and scientific authorities, and released for comment and public hearings throughout the region. Citizens should have the capability of recommending certain stipulations upon which approval of a project would be contingent: such things as protection of archeological/cultural resources, protection of important biological resources, wellhead/pipeline design features to avoid conflict with existing uses of an area, operational controls, geohazards identification and mitigation, drilling mud discharge protocols, protection of air and water quality, protecting visual and aesthetic quality, noise reduction technologies, and adjustment of taxes and royalty rates.

Further, the governments of the region must commit to long-term ecological monitoring of the Caspian region environment, and must commit to having all research peer reviewed and made available to the public, and submit all such information regularly for review by the Caspian Regional Citizens Advisory Council. Such monitoring should continue throughout the life of the petroleum projects. In this regard, the Caspian Environment Programme, recently established by the UN Environment Programme, deserves support and funding.

Corporate Profiling

It will be important for the citizens of the Caspian region and Kazakhstan to get to know the companies that are doing business there. The companies need to understand that the citizens of the region care about the character of the companies doing business in their home. The Regional Citizens' Advisory Councils or other NGOs should set about the task of developing a comprehensive profile of each company involved in petroleum operations there, and updating this profile annually. This profiling should include annual financial statements of the companies, where else in the world they do business, what other business they are involved in, subsidiaries and parent companies, their track record elsewhere, litigation the company faces, their human rights policies, their environmental standards, their health and human safety standards, the composition of their Board of Directors, and any other outstanding issues regarding the way these companies do business. The companies should be regularly evaluated on the basis of their risk reduction measures, energy conservation programs, safety of their products and services, openness and responsiveness to requests from the public, informing the public of relevant issues, internal management commitment to excellence, and their audits and reporting functions.

The Fiscal System for Petroleum Revenue Assessment and Collection

The first and foremost interest of the government must be what is in the interest of its citizens. Regarding revenues from petroleum, the overall policy objective should be to establish a fiscal regime for assessing and collecting revenue that will, over the long term, maximize the value of the oil development to the public. Put simply, the revenue objective for the government of Kazakhstan should be to earn as much as possible from the exploitation of the petroleum resources within its borders, while allowing the industry to earn an appropriate rate of return. The policy challenge, thus, is to construct an optimal revenue regime that maintains appropriate production incentives while maximizing the public share of the revenue – a delicate balancing act, to be sure. This is a difficult task, and host countries often leave far too much revenue in corporate hands than is appropriate or necessary from a public policy standpoint.

In the discussion of petroleum fiscal regimes, two broad issues should be considered: first, the split of revenues between the government and the industry; and second, the split of government revenues between annual expenditures and savings funds (such as a permanent fund, or budget reserve fund). Both are discussed below, and it is important not to let focus on one of those distract from focus on the other (Dr. Richard Fineberg's paper of 12/20/01 explains how these issues come together).

On the first of those issues, it is probable that Kazakhstan is at present not realizing a fair share of the economic rent (excess revenues above production costs) from the exploitation of its natural resources in general. In particular, it is likely that the current fiscal structure and collection practices leave too much of the revenue from oil and gas production with the petroleum companies themselves, resulting in a large amount of urgently needed money being lost to the government and citizens. Production Sharing Agreements (PSAs) typically crafted in Russia and other former Soviet states allow the industry to delay payment of taxes until all costs are fully paid. These agreements need to be carefully structured – and their execution needs to be even more carefully audited – as it is quite easy for clever accountants to hide profits as “costs”, allowing companies to thus delay and minimize any payments to government. In the face of such difficult economic conditions as exist today in much of Central Asia, many observers find it outrageous that the petroleum companies would be allowed to retain excess revenues generated from the region’s oil and gas resources. At a minimum, an equitable fiscal regime should assure that the government captures, for the people of Kazakhstan, at least half of the “economic rent” – the revenue generated by production minus the total costs of field development, production, and transportation.

The Alaska Petroleum Fiscal System – Like Kazakhstan, Alaska’s large oil fields are distant from tidewater and even further from markets. Therefore, a look at Alaska’s petroleum fiscal regime and experience may be useful. It should be noted at the outset that Alaska’s system suffers from at least four major defects, as outlined by economic consultant Richard Fineberg. Administratively, the system is cumbersome; state revenues are unstable because those revenues are based on oil prices, which are inherently volatile; due to chronic under-reporting of prices and over-reporting of costs by the companies, Alaska has been forced to litigate to receive a substantial portion of its revenue; finally (and most importantly) for reasons which will be discussed below, Alaska’s system leaves too much revenue in the hands of the oil companies.

Briefly, Alaska petroleum revenues come from four principal sources:

- ownership royalty (12.5% of production value)
- production (severance) tax (up to 15% of production value; reduced rates for “marginal” or less profitable fields)
- property tax on facilities and equipment (2% of value)
- state income tax (9.4% of net profits)

In the 25 years of operation, the expenditure of an estimated \$75 billion on Alaska North Slope crude oil production has generated nearly \$275 billion in total petroleum revenue. The \$200 billion remaining after development, production, and transportation costs were paid (the “economic rent” from North Slope oil production) was divided approximately as follows:

- Industry Profits \$85 billion
- State of Alaska Revenue \$60 billion *
- Federal Revenue \$55 billion

Total Economic Rent \$200 billion
(from Alaska North Slope)

[* This total includes estimated direct deposits of royalty revenues to the Alaska Permanent Fund (\$6 billion) and litigation settlement revenues to the Constitutional Budget Reserve Fund (\$5.5 billion)]

Two positive aspects of the Alaska petroleum fiscal model include the Alaska Permanent Fund (APF) and the Constitutional Budget Reserve Fund (CBRF). While it should always be kept in mind that these savings and stabilization funds comprise only a small percentage of Alaska’s share of the economic rent from oil production, they both play important roles in the Alaska fiscal and political system. *The Alaska Permanent Fund* was created in 1976 to save some of the oil revenue windfall received by the state government as the oil fields are depleted. Each year, 25% of the state royalties from oil and gas fields discovered prior to 1980, and 50% of fields discovered after 1980, are deposited into the Permanent Fund. Today, the Fund has grown to over \$25 billion in assets, of which over \$19 billion represents the Fund’s principal. The Fund is managed by a public corporation – the Alaska Permanent Fund Corporation, with six trustees appointed by the governor. Approximately 37% of the Fund is invested in domestic stocks, 16% in international stocks, 37% in bonds, and 10% in real estate. It is today one of the 100 largest investment funds in the world.

The principal of the Alaska Permanent Fund is protected as inviolate by the state’s Constitution, and the Fund’s income is spent on two things – a portion is used to “inflation-proof” the Fund to protect from devaluation, and the rest is paid each year as a dividend to every citizen of Alaska – the true owners of the Fund. Annual dividends paid to Alaska’s citizens from the Permanent Fund since 1980 have increased from about \$300 (US) in the early years to a record of almost \$2,000 per person in year 2000. People choose to use these annual dividends with varying mixtures of savings and spending, and the overall infusion of such capital (\$1 billion last year) into

the Alaska economy has a dramatic stimulating effect. Because of the dividend program, the Alaska Permanent Fund is enormously popular. And the Alaska fund contrasts sharply with the permanent fund from oil in Alberta, Canada where they have not inflation-proofed the fund and don't pay citizens dividends. With roughly the same amount of monetary input, the Alberta fund is today only 1/3 the value of the Alaska fund.

The *Constitutional Budget Reserve Fund* (CBRF) was established by Alaska voters in 1990, and requires that all settlements from oil and gas tax and royalty disputes between the state and the oil companies be deposited into the CBRF. Over the years this has amounted to billions of dollars, underscoring the importance of adequate oversight, audit, and legal capability to collect the public's fair and rightful share of the economic rent from oil and gas. The CBRF is used each year to balance the state operating budget. The CBRF contains about \$3 billion today.

From time to time the oil industry has been able to secure tremendous benefits through "sweetheart deals" negotiated between industry and Alaska's political leaders. The result is two shortcomings in the Alaska petroleum fiscal system that deserve special mention: formula apportionment accounting, and retention of overcharges by the companies for pipeline tariffs. First, "formula apportionment accounting" allows oil companies to pay state income taxes based on their lower world-wide corporate earnings rather than on the basis of their higher Alaska earnings; and second, as identified by oil analyst Richard Fineberg, the oil producers are also the pipeline owners, and they retain profits from tariffs charged for shipping oil through their own pipeline. This simple arrangement will reduce the State of Alaska's revenues between \$5 billion and \$10 billion over the life of the North Slope fields. The enormous cost of such seemingly esoteric accounting formulas must be understood and avoided by the people and governments of the Caspian.

Kazakhstan – The government of Kazakhstan has a paramount obligation to collect, on behalf of its citizens, a significant part of the revenue stream from its petroleum resources. I would propose at least half of all petroleum revenues above production and transportation cost be collected by the government for public purposes (Others, such as those subscribing to the economic theory of Henry George, propose that all of the revenue from natural resources above cost be collected by the government). At the very least, the taxation regime should be restructured to be *progressive*, whereby an additional amount of tax on oil is collected for every dollar that the market price exceeds a specified *base price*. It is my suggestion that a *base price* be set equal to the cost of production and transportation, which

say, for our discussion purposes we will assume is \$5 / barrel for oil. Then, for instance, the Kazakhstan government would collect an additional 50 cents (\$ 0.5) / barrel for every one dollar (a 50% surcharge) that the world market price exceeds the \$5 / barrel base price. At a market price of \$15 / barrel, the government would receive an additional \$5 / barrel in tax, at \$25 / barrel it would receive an additional \$10 / barrel, and so forth. The government's tax intake would be reduced, of course, if the base price is set higher – say \$10 / barrel rather than \$5 / barrel – and with lower world market prices – say \$20 / barrel rather than \$25 / barrel. Without creating unrealistic expectations from petroleum revenues, it is clear that a significant amount of earnings should be possible.

This structure is an essential component of a *progressive* petroleum taxation regime, and one we do not even have in place in Alaska, but should. Such a regime is one of the most efficient methods for government to recover a more equitable share of the revenues being left at present with the energy companies. Transnational corporations can be expected to argue vigorously that such an arrangement will not allow the companies to earn profits commensurate with investments elsewhere. The best way to counter this argument would be to gather economic data from authoritative sources regarding present and prospective state/industry shares of economic rents under other petroleum regimes. With this information in hand, Kazakhstan's leaders would then be able to support its position if transnational oil companies threatened to pull up stakes and leave Kazakhstan.

For conceptual purposes, a market price of \$25 / barrel (in US dollars) minus the \$5 / barrel production and transportation cost, would leave \$20 / barrel in “economic rent.” If Kazakhstan were to produce 1 million barrels of oil / day, then the rent would amount to \$20 million / day, or \$7.3 billion / year just from oil. If the exploitation of Kazakhstan's other *non-renewable* resources (natural gas, coal, minerals) collectively produces a revenue stream comparable to oil, then one could estimate, for conceptual purposes, that on the order of \$14.6 billion / year would be available as “rent” from oil, gas, and mineral production. How the government decides to apportion this rent is very important, and clearly this revenue provides a tremendous pool of funds from which the government can build a strong and prosperous economy.

If half of this rent – \$7.3 billion / year – were to be captured by the government in taxes and royalties then, using the Alaska model, the government could use perhaps half of that amount – \$3.6 billion / year – for the urgent needs of its operating budget, including critical investments

in infrastructure, education, health care, the environment, and other social welfare needs. The governments should exercise considerable fiscal discipline in its spending, as the money can easily be exhausted rapidly and wastefully. Part of these government oil revenues should be set aside as an Environmental Restoration Fund with which to finance cleanup, restoration, rehabilitation, and protection of natural areas and resources. [And Kazakhstan and other Caspian states should provide leadership in the establishment of a proposed Global Habitat Conservation Fund at the United Nations, which would be funded by a nominal (0.5% - 1%) tax on all fossil energy production globally. This \$5 billion - \$10 billion / year Fund would be used by the United Nations in payments to protect threatened ecological areas throughout the world, and those monies not expended each year would remain in the Fund to form the corpus of a Global Permanent Fund. Thus, as Earth's non-renewable resources are depleted in coming decades, a substantial savings account will be retained for future generations, funding the entire United Nations budget and other worthy environmental and sustainable development initiatives as they arise.]

Further following the Alaska example, the other half of the "surplus" revenues – \$3.6 billion – could be deposited into a Kazakhstan Permanent Fund, which would grow each year with further deposits and wise investments. If, for instance, Kazakhstan were able to deposit \$3.6 billion / year into the Kazakhstan Permanent Fund for 5 years, at a 10% return (investment in stocks, etc) the principal of the Fund would be worth \$22 billion after only 5 years, and \$58 billion after 10 years.

The earnings of the Kazakhstan Permanent Fund could be used first to inflation-proof the Fund, with the balance paid as a *Citizens' Dividend* similar to ours in Alaska. If after 5 years the Fund is able to produce \$2 billion in earnings after inflation-proofing, then each citizen (man, woman, child) in Kazakhstan could receive an annual Permanent Fund dividend of approximately \$100 (US). Also, through collection of greater revenues from oil, gas, and minerals the government would be able to reduce the burden of income and sales taxes and personal income taxes on the economy. And by removing such a large concentration of revenue from corporate hands, such a taxation regime could dramatically inhibit opportunity for corruption and organized criminal activity. The government will of course need sufficient audit and legal capability with which to monitor the collection of all such revenues.

And, if some transnational energy companies threaten to leave Kazakhstan if such a regime were to be imposed, you should simply encourage them to do so – call their bluff. It is doubtful that they will do

so, given the amount business they would forego. Kazakhstan's extensive non-renewable resources – oil, gas, coal, and minerals – have been in your soil for millennia. The reserves would still be there in the future, and worth considerably more as prices increase with decreasing world supplies. As discussed above, this may be the smartest investment strategy of all.

The dramatic near-term macro-economic benefits of such a revenue structure should be obvious. And over future decades, as Kazakhstan's oil, gas, and mineral deposits are depleted, the Kazakhstan Permanent Fund should grow to an substantial principal and earnings potential. In this way, there would be a grand legacy left for your children and their children alike. Without such a mechanism, there will likely be little left to show for this period of non-renewable resource exploitation/liquidation/gluttony. The choice couldn't be more clear.

Rate of Reserve Extraction

There are various scenarios where it might be economically advantageous to simply leave an oil reserve untapped and in the ground for future extraction. If a country can lend and borrow as much as it desires and has other short-term economic alternatives, then oil reserves should be left in the ground or drawn down more slowly for the time being, as they will likely increase in value beyond interest rates. Put simply, as oil and gas resources are finite, they are likely to be worth considerably more in 10 or 20 years than they are today. If you can afford to do so, it may be prudent to leave some of your oil and gas in the ground for future extraction at higher value. While further exploration to identify currently unproven reserves may be appropriate, their immediate extraction may not be the most appropriate fiscal decision. Such retained reserves would constitute a *Strategic Petroleum Reserve* for Kazakhstan. Also, it is probable that carbon sequestration credits will become a salable commodity with significant value in the near future. As such, retained petroleum reserves can accrue considerable market value that would be unavailable if the reserves had been "developed."

Financial Liability

Financial liability is the primary incentive for responsible conduct by industrial interests throughout the world. With adequate financial liability at stake, oil companies will be motivated to design, construct, and operate their projects as safely as possible. Conversely, without adequate financial liability at stake, even the most stringent government regulation and oversight will not achieve a safe system. It is imperative that financial liability for spills, accidents, negligent conduct, etc. in Kazakhstan and the Caspian as a whole be sufficient to cover the maximum potential cost of a worst-

case event. Such liability must cover any and all compensatory damages (lost value of commercial enterprises, etc.), punitive damages (to punish and deter future reckless corporate conduct), and natural resource damages (“non-economic” ecological damage). It is also important that, in instances where gross negligence (or recklessness) can be proven, there should be no limits to liability.

Within such a liability structure, the business calculation of benefits / costs of adopting Best Available Technology standards can be formulated, whereby company accountants and executives understand the enormous financial risk inherent in not adopting BAT standards from the start. Also, insurers need to be actively engaged in ensuring incorporation of BAT standards, as it is also their money that is at risk. On this note, Certificates of Financial Responsibility (COFRs) should be required to be filed with the government to ensure that they have adequate coverage for a worst-case event. By way of example, by the time it is all over, Exxon will have paid as much as \$10 billion (US) for damages caused by its 1989 *Exxon Valdez* oil spill in Alaska waters. [Again, it should be recalled that today the environment, economy, and communities in the region damaged by the *Exxon Valdez* spill have still not recovered, some 13 years later, and the litigation is still unresolved.] And, as few companies would have this sort of financial capability, it is important to certify that each and every operator and owner has sufficient capability, either internally or through its insurers, to pay legal claims arising from *any* incident involving its operations. It is also recommended that the governments establish an “Oil Spill Liability Trust Fund” for the Caspian region, modeled perhaps on that established in the United States. This fund is based on a \$0.05 / barrel tax on oil produced and imported into the U.S., and capped at \$1 billion. The fund is available for government use in prevention, response, restoration, etc., with the government ultimately seeking to recover such monies from the responsible party.

Conclusion

The President of one oil company recently stated that “we are now entering the end of the age of oil.” Indeed, recent estimates suggest that industrial society has consumed, mostly in just the last 50 years, about 1/2 of the recoverable oil reserves on Earth – about 1 trillion barrels down, about 1 trillion to go. How we extract, transport, use, and/or save the remaining amount will be of enormous consequence, both short-term and long-term. Given the ravages presently being caused by climatic warming, together with the advances in energy efficiency technology and alternatives, the obvious wise course is to reduce the global consumption of oil as much

as possible. To stabilize the global climate, atmospheric CO₂ emissions will have to be reduced from their current level of 6 billion tons / year to less than 2 billion tons / year. However, if oil is to be developed by a nation, it must be done with the utmost commitment to the environment, social justice, and economic equity. The above discussion suggests several issues that should be considered, and minimum standards for any petroleum development proposed in the 21st century.



TNCS, NATURE PROTECTION AND THE ROLE OF SOCIETY

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Non-governmental organizations (NGOs) in the countries of the former Soviet Union (FSU) are often at a loss as to how to effectively and correctly deal with transnational corporations (TNCs). In their interaction with TNCs, many NGOs are moving along a path of trial and error. Apparently, it is hard to learn from others' mistakes.

Before one gets involved in any activity, it is necessary to understand what one is dealing with and determine one's goals, tasks and methods of work. Perhaps this material can help clarify the basic problems and issues that NGOs in our countries face in connection with TNCs. TNCs play a specific role in our countries, in using natural resources and in actively influencing the condition of our natural world. Perhaps this material can provide a set of basic principles to assist NGOs in their interactions with TNCs.

I. TNCS APPEAR ON THE SCENE

The development of the market economy in the countries of the FSU has allowed transnational corporations to deeply take root in our countries. They have a growing influence on our natural environment, and on the political, socioeconomic and cultural aspects of life in our countries. The growth of their influence is not accidental. First of all, the very nature of TNCs demands that they search for new spheres in which they can expand their influence. Second, their expansion in FSU countries is the logical result of the socioeconomic changes that are occurring in these countries, which create favorable conditions, not only for the infiltration of international TNCs, but also for the formation of national ones. Their influence has

become one of the major determining factors in the development of these countries.

What attracts TNCs to the FSU? Just as in other developing countries of the world, and in countries with transitional economies, the most attractive features include a cheap labor force and natural wealth: enormous reserves of useful minerals, and diverse biological and rich recreational resources. As a matter of fact, individual corporations do not try to hide this. For example, according to specialists of the German Society for Technical Cooperation (GTZ), “Currently in Kazakhstan, there are no positive conditions for investors other than cheap labor and an relatively rich base of natural minerals” (*Panorama*, Oct.15, 1999).

If we look at the current situation from the perspective of the history of interaction between nature and society, one can see several differences between the contemporary and Soviet periods. Industrial giants with advanced technology, focused on providing for the prosperity of their shareholders, have taken the place of the industrial giants of the Soviet period.

The major difference between these different periods is that the TNCs that have come to our country with their colossal financial and technical capacity are aiming, first of all, to exploit our natural and human resources for their own interests. The industrial giants of the Soviet period acted within their own country and took responsibility for the social sphere. A significant portion of the population was engaged in these enterprises; that is, people had a jobs, housing, a promising future and a belief in tomorrow. Ecological problems were also significant, but people knew less about them and they did not seem to be as serious as they appear to be today.

However, one cannot look at all TNCs the same way and place them in the same category. As historical experience has demonstrated, the character of activity of corporations is highly diverse: from the development and introduction of advanced, environmentally sound technology to the exhaustion of the natural resources of the planet. Therefore, before one falls into the arms of the TNCs, or, on the other hand, raises the barricades, it is necessary to painstakingly analyze the situation separately for each transnational corporation.

The diversity of the activities of TNCs also calls for different relationships between them and the populations and governments of different countries of the world. They have become so universally widespread that there is probably not a country in the world that is not influenced – directly or indirectly – by TNCs. One could accurately say that the world has been captured by TNCs.

Therefore, participants in the environmental movement should focus their energies on the activities of those entities whose activities frequently violate human rights and the environment.

II. SPECIFIC ACTIVITIES OF TNCs

In contrast to their activities in other countries in the world, the activities of TNCs have particular political and socioeconomic nuances in the FSU.

Human Rights and Rights of Nature

It is generally recognized that the countries of the FSU still have a long way to go in the sphere of human rights, and that the incredibly difficult socioeconomic transition taking place in these countries benefits the TNCs. There are no strong, independent trade unions; there is no united green movement or strong movement to protect the rights of consumers. Citizens' access to legal proceedings and environmental decision-making needs to be improved. The governments of the countries of the FSU do not pay sufficient attention to observance and protection of human rights. This means that TNCs may also ignore even the most basic of human rights, although these rights in the West are accepted as a matter of course. The less TNCs have to observe the rights of others, the greater the chance they have to receive a larger profit.

Access to Information

A good example of how of TNCs view human rights issues can be found in the limited access to information TNCs provide on their activities and on how these activities affect the natural environment. Publicly disseminated materials of these companies provide only the most general profile of their activities. Therefore, often the public has no idea what a TNC is doing and how it is impacting the environment and health of the population. This situation is often exacerbated by possible individual personal gain that can be obtained from a particular TNC, especially for people who don't even have a crust of bread.

The general character of the information that is presented gives the impression that TNCs are less than enthusiastic about demonstrating the real nature of their business, their impact on the environment, or even actual figures revealing company profit. (*EXXON...*, pp.16,19).

However, using their financial resources and access to the media, TNCs do not pass up the opportunity to advertise themselves and to create an image as socially responsible. In order to do that, TNCs carry out various voluntary activities, including environmental activities, earmarking funds to support health, education, and culture and various infrastructure-building projects. And they widely distribute information about such good works.

For example, since 1993, Phillip Morris Kazakhstan has provided \$2.5 million in funding to support cultural, educational and social projects (*Panorama*, July14, 2000). In 1999, Karachaganak Petroleum Operating (an alliance of the companies Agip, British Gas, Texaco, and Lukoil) financed the construction of health establishments and hooking up several regions to gas pipelines, spending \$19 million (*Panorama*, Dec. 3, 1999).

Although TNCs are not successful in convincing many representatives of the NGO sector and green movement of their love for the environment, nevertheless, they actively work to improve their public image, and in doing so, often create a schism in the ranks of the greens. In 1998, the corporation Mobil financed the conference, "Ecology and Sustainable Development". In 1998-99, Mobil supported Earth Day and a trash cleanup in the foothills of the Zailiisky Alatau mountain range. In 1997-98 Exxon and Mobil supported the education of student ecologists at Kazakhstan State Architecture Construction Academy.

In this way, one can argue that official information on corporations is completely accessible, but gaining access to any other additional information, even of a general character, is not simple, and this doesn't even include information that involves the reputation of the company. The majority of TNCs relate to the public the same negative way that our government relates to the public. For example, to Green Salvation's request to fill out a simple questionnaire, which was sent out twice in Russian and English to 18 TNCs with representation in Almaty, only 5 companies provided an official answer. This fact supports the impression that only a few companies demonstrate a readiness to engage in an open dialogue, and, even so, it is evident that many of them only do this under pressure from the public.

TNCs provide information on technical data more willingly. This is less understandable to the general public and is difficult to refute or confirm without specific scientific knowledge and access to primary data. The argument is usually as follows: the company possesses advanced technology, therefore the population and the public have nothing to fear. For examples of this, one can look at the web site of OKIOC at <<http://www.okioc.kz/rus>>.

It is worth mentioning that specialists and government authorities in the field of environment also lack sufficient information to make decisions regarding the activities of TNCs. In Kazakhstan, the system for monitoring environmental pollution functions under extremely difficult limitations due to insufficient budgetary resources. For a number of years in Kazakhstan "the financing of [environmental monitoring] work has been carried out

by local influential natural resource businesses.” (*Informational Environmental Bulletin...*, p.22). That natural resource users are monitoring the environmental impact their own activities makes one question just how reliable such monitoring is (*Panorama*, Dec.15, 2000).

Analysis demonstrates that we are continually running up against a deficit of information about the activities of TNCs, which considerably complicates making a decision about how to interact with them. And this occurs despite the fact that companies understand the importance of supplying open information about their activities.

International and National Environmental Legislation

Corporations are conducting exploration and drilling for oil in the Caspian Sea, the international legal status of which has not yet been determined. Apparently, the as of yet undefined legal basis of oil activities in the Caspian and the uncertainty of a series of other international legal questions between the Caspian states and world community does not bother TNCs. However, this does not mean that corporations do not influence the level of observance of international environmental agreements. On the contrary, TNCs and their activities have a strong influence, but it is usually not direct and difficult to identify, because they use a variety of mechanisms, including unofficial channels, which are difficult to control and monitor (Hunter, et al., p. 435.).

At the same time, the governments of the countries of the FSU need to attract investors and create favorable legal conditions for the activities of TNCs, even if this frequently violates human rights. In the near future, it will be necessary to expect an increase in the activities of national TNCs (from the countries of the FSU), as on March 6, 1998, a group of FSU countries signed the Convention on Transnational Corporations (not yet in effect as of September 2000). This convention “will serve as the general basis for cooperation of all parties in the creation of TNCs and the activities of transnational corporations” (Article 1.1), including “state support for the activities of corporations” (Article 8). One example of such support is a proposed effectual decrease on profit taxes for TNCs in the form of accelerated amortization for companies extracting natural resources. Currently, this proposal is under consideration for inclusion in the new tax code of Kazakhstan.

In our countries, as in other regions of the worlds, TNCs seek to create the image that companies should respect the letter of the law. The “Position on General Principles for Activity” of Royal Dutch/Shell says that the companies should “comply with the laws of the countries in which they work”. The oil company OKIOC continually stresses that it firmly complies

with the legislation of the Republic of Kazakhstan. However, the companies do not point out how they conduct themselves in countries where the legislative base is significantly different from their own. The situation is exacerbated in cases where TNCs operate in countries with very weakly developed environmental legislation. These countries do not have a sufficiently developed legal basis to regulate the activities of TNCs, as TNCs are regulated in developed countries.

But TNCs do not just passively follow the letter of the law of the host countries. They also actively influence the legislative process. According to specialists at the Worldwatch Institute, TNCs have a real influence on the development of legislation in many developing countries. More than 70 countries in the world have developed legislation on regulating the extraction of useful minerals in order to make their countries more attractive to foreign mining companies. Only a few countries are moving along the path of strengthening their environmental legislation and its enforcement (*State of the World 1998*, p.154). There are no grounds to suggest that in our countries TNCs will operate in a different way.

For example, there is evidence to suggest that point 2, Article 48, “State-Protected Zone of the Northern Part of the Caspian Sea” of the law “On Special Protected Natural Territories” of the Republic of Kazakhstan, 1997, was adopted under the pressure of TNCs. Conducting “state geological study, exploration and drilling of hydrocarbon resources under special environmental conditions” was allowed on the territory of state-protected zones. When oil was found on the shelf, the government introduced a proposal to the Parliament to amend this law, probably because of pressure from interested parties. The amendment excluded Article 48. This was probably done with the goal of nullifying the environmentally protected status of the territory and “the special environmental conditions”.

The Parliament is currently reviewing other amendments to the existing environmental laws of the Republic of Kazakhstan, which were introduced by the government. One can define the general goal of the amendments as a weakening of the environmental legislative conditions. This allows for increased exploitation of nature and changes the status of the nature protection ministries. For example, in Kazakhstan and Russia, the Ministry of Natural Resources and the Ministry of Environmental Protection have recently been combined. These changes will be, without a doubt, favorable for TNCs.

Nevertheless, TNCs do not hide the fact that they have influence on the formation of national legislation. At a roundtable meeting between representatives of NGOs and TNCs at the international seminar

“Developing Principles for Interaction Between Non-governmental Organizations and Transnational Corporations in the Caspian Region,” which was held on September 10-12, 2000 in Almaty, representatives of corporations spoke openly about this. From their presentations, one could conclude that in Azerbaijan, Kyrgyzstan, and Kazakhstan, TNCs – in one or another way – wield influence over the development of national legislation. Granted, the company representatives believe that this leads to the improvement of laws. Exxon does not hide this fact, and states that it cooperates with “state and industrial groups”, assisting in the adoption of “effective legal norms for environmental protection” (*EXXON...*, p.19). Thus, the question arises, with which national legislation do TNCs comply? To the legislation that existed in our countries before their arrival, or to the adapted versions, enacted under pressure from them?

TNCs are interested in lowering the fees for polluting the environment, stating that the environmental quality standards, for example, on air quality, in the majority of Eastern European counties “are much stricter” than in the countries of the European Union (*Environmental Action Programme...*, pp. 38-39). In 1998, environmental specialists in Kazakhstan had serious concerns about the Ministry’s (Ecology and Natural Resources) decision to reconsider the existing permissible air emissions limit for the joint venture “Tengizchevroil”, increasing the limit to the actual existing emissions level of the company. In the opinion of ecologists, this decision would lead to the loss of fines equal to several million tenge on emissions in excess of the norms, “which would have somehow served to compensate the population for their loss of health” (*Panorama*, May 1, 1998). Although the new emissions limit set by the ministry was significantly higher, it was still not the limit Tengizchevroil had hoped for. This year, Ken Goddard, General Director of the company, said that “Within Tengizchevroil, there is constant control and monitoring of emissions levels at Tengiz, both in the industrial zone and in the workers’ villages and nearby population points. Beginning in 1993, Tengizchevroil has not only never violated the emissions limits, ... but on the contrary, the air here has become cleaner with every year” (*Panorama*, Oct. 9, 1998).

When the Western Kazakhstan oblast administration of the Ministry of Natural Resources and Environmental Protection (MNREP) tried to bring economic sanctions against the company “Karachaganak Petroleum Operating,” they discovered that the company held special status, exempting them from paying environmental protection fines. Article 24 of their production sharing agreement states that “the contractor will be freed from payment or responsibility for paying all environmental protection fines...

and will be ensured compensation in relation to various environmental protection claims". In the opinion of MNREP, this agreement outside of republican environmental protection legislation is completely "normal." "Such a contract provides no special privileges to a foreign company," stated the minister of MNREP (*Panorama*, June 11, 1999).

Recently, the mass media has published articles about the various "special" forms of legal status and deals negotiated by TNCs, which in effect actually support the existing bureaucracy and encourage the development of corruption in the counties of the FSU.

According to data in the Wall Street Journal, foreign companies must spend a specific percent of their annual income on bribes to bureaucrats in FSU countries: 8.1% in Georgia; 6.5% in Azerbaijan; 4.7% in Kazakhstan; 4.1% in Russia (*Izvestiia*, July 13, 2000). The companies claim that bribery contradicts the principles on which their business is founded, but at the same time acknowledge that isolated incidents do occur, without naming specific countries (*How Do We Stand?...*, p. 30). Fairness demands that one notice that the same TNCs battle with legal chaos and the arbitrariness of bureaucrats in the FSU countries. But it is clear that for them, it pays to play the game.

After useless attempts to conduct normal business, a group of companies decided to phase out their operations in Kazakhstan. As a newspaper headline nicely put it, "Real changes are necessary in Kazakhstan in order to bring back foreign mining companies" (*Panorama*, April 14, 2000).

The legal chaos in our countries provides corporations with the opportunity to increase exploitation of natural resources, and the destruction, depletion, and pollution of the environment.

Socioeconomic Situation

Another side of the activity of TNCs should also be noted. Under difficult socioeconomic conditions, TNCs contribute to the support of economic and political stability in many countries by creating employment, creating a significant quantity of services and production, which guarantee a financial flow to the budget.

For example, the company Chevron invested \$1 billion in Tengizchevroil. Direct and indirect flow to the budget of the Republic of Kazakhstan from the activity of Tengizchevroil in 1999 was \$490 million (*Panorama*, June 23, 2000). Phillip Morris Kazakhstan in 1997 hired 21 thousand tobacco growers and has contributed \$300 million to the development of industry, the building of new factories and the development of an agricultural program (*Panorama*, June 26, 2000). The group LNM invested \$650 million in the development of IspatKarmet (the daughter company of LNM). The

enterprise is one of the largest private employers in Kazakhstan; 55 thousand people work there (*Panorama*, July 7, 2000).

However, in spite of the significant investment by TNCs in the economy of Kazakhstan, the benefits the republic receives could be much bigger under conditions of fair world market economy practices and well-thought-out internal economic policies.

Annually, the budget of Kazakhstan fails to receive more than \$500 million due to the under-valuation of exports. Powerful foreign oil/gas and metallurgy firms sell raw materials for lowered prices through offshore companies (*Panorama*, Sept. 1, 2000) in order to avoid paying taxes on the full value of the export of the good. In the opinion of official government organs, a group of oil companies, including Hurricane Kumkol Munai (a subsidiary of the Canadian company, Hurricane) and Tengizchevroil exported oil at prices 3-4 times lower than average world prices. We are talking here “about premeditated falsification, lowering of profits on export operations, which results in a hidden drain of capital out of Kazakhstan” (*Business Week*, Feb. 11, 2000).

The confusion over the property rights to natural resources exacerbates the situation. In Kazakhstan, the owners of natural resources are the executive organs of local government; thus decisions about land and natural resource use, no matter what their importance, are made without the participation of the Parliament, to say nothing of representation of local residents. The situation is similar in Russia, which there has led to the sale of parcels of land categorized as for “agricultural and other individual purposes such as dacha construction en masse,” (Erofeev, pp.199-200). As a result of the property rights chaos in Kazakhstan, the state has lost “control over the major and most promising oil and gas deposits, which, as a result of privatization, are under the control of transnational corporations” (Smirnov, p.63).

The level of influence of TNCs in other areas of life is not yet significant, but it is growing at a quick tempo. Consumer interests are being formulated very quickly. Goods, services, TV programs, advertising, produced or financed by transnational corporations, are filling up our markets and stores, cities and villages, streets and apartments. TNCs are imposing irrational models of production and consumption, which will create new ecological and social problems.

The Experience of NGOs and TNCs in the Countries of the FSU

The influence of TNCs on the environment and the possibility of attracting their financing for nature protection are underestimated by our NGOs and by the public. Biotechnology companies warrant the most serious concern. One can judge this by the articles in the “green” press of the FSU

countries, in which information on the appearance in the market of genetically modified products is frequently published. Other aspects of TNC activity attract much less attention. In Russia, the underestimation of TNCs can be explained by the fact that domestic privatized industrial giants have practically become TNCs (Lukoil, for example), and that there are far fewer foreign companies in Russia than in Kazakhstan, for example.

The result of an almost total lack of experience on interaction between TNCs and NGOs and of clear principles for interacting with them, today a wide variety of relationships can be seen between NGOs and TNCs, from close cooperation to open confrontation.

Foreign NGOs have accumulated significant experience working with TNCs, though it is not possible to say that they have been able to successfully solve issues of nature protection that have resulted from TNC activity. The accumulated experience of these NGOs allows organizations to develop principles, which they follow in their interaction with TNCs. At the present time, the first examples of cooperation between non-governmental organizations from the FSU and developed countries of the West are developing in this area.

FSU “greens” do not have significant experience in cooperating with trade unions, consumer rights groups, or with other organizations that have a rich experience in interacting and struggling with TNCs.

We need to turn over a new leaf. Can we use the Western experience or not? Can we create a mechanism for solidarity among NGOs and other social movements in interacting with TNCs? To a great deal, both the conduct of TNCs in our countries and the condition of the natural environment in our countries will depend on this.

III. WHAT ISSUES DOES SOCIETY FACE?

Just as participants in the environmental movement should consider the activities of TNCs in their daily work, we must also identify criteria on which we can build a basic template for our interaction with them. We believe that the basic criteria could be the following:

Human Rights and Rights of Nature

The population and civil sector must build their relationship with TNCs on the basis of internationally accepted human rights and the rights of nature. TNCs must first take into account their influence on human rights and the rights of nature. These rights must be acknowledged and observed by TNCs and be enforced by the state organs of the country in which they are working. Similar demands have already been incorporated, for example, into the Sierra Club’s policies on environmental protection, under a section

on dealing with transnational corporations. The International Committee of the Sierra Club approved this document on October 17, 1998 (point 24).

But, most likely, there is not one company that has not violated human rights. For example, Royal Dutch/Shell, which is sadly famous for the tragic incidents in Nigeria in 1995, proclaimed its adherence to the general declaration on human rights in its annual report for 2000 (*How Do We Stand?...*, p.25). Therefore it is important to be able to demonstrate facts of human rights violations.

On the other hand, if TNCs are really leaders in human rights, then they should not invest finances in the economy of a country whose leadership does not observe human rights. The role of NGOs should include monitoring whether or not TNCs observe principles of human rights, and to lobbying for their enforcement.

Information

Information about the influence of the activities of TNCs on the environment and on human health is not classified as a state secret; therefore, access to this information should be open. It is necessary to demand from our governments that the authorized state organs gather this information and provided it to society, along with other environmental information, and to demand that companies submit required information.

The quantity and composition of information must be sufficient for the public to make well-founded decisions. This is particularly important because the information usually given by companies is inadequate to make a well-thought-out decision. This question of information should also serve the interests of those TNCs that are ready for constructive dialogue, and not simply to publish brochures with pretty pictures.

In order for information to be sufficient to make decisions, it must contain answers to key questions and be complete. For example, what were the conclusions of the state environmental impact assessment for the selected company projects? How will the TNCs use recommendations on environmental reporting (accounting) for TNCs, developed by the Intergovernmental Working Group of Experts in International Standards, Calculating and Accounting of the UN Conference on Trade and Development (*Environmental Accounting...*)? How will TNCs observe and protect basic human rights at their establishments, and particularly the environmental rights of people and the rights of nature?

International and National Legislation

First of all, it is necessary to force TNCs to acknowledge their responsibility for the condition of the environment and to observe the

human right to live in a favorable environment, which is not yet included in the well-known international document *Agenda 21*. Eight years after the appearance of this document, the question of TNCs' responsibility on this issue is not yet on the table. For example, in the "Project for the Environmental Strategy of the World Bank for the Regions of Europe and Central Asia," there is no mention of the influence of TNCs on natural resources and environmental pollution, although the World Bank maintains long-standing and permanent ties with TNCs, and thus is well aware of their existence and activities.

TNCs, as the largest users of natural resources, must promote the observance of international environmental conventions, and not protect incompetent bureaucrats and their own supposed political neutrality.

Because the accountability of TNCs is not adequately developed in the national legislation of the countries of the FSU, it is necessary to push for the creation of national laws that will permit state organs to exercise control over the influence of corporate activities on the environment. Such laws should require those corporations to present complete reports. Such laws exist, for example, in the Netherlands, where they have also developed a law on environmental accountability (*Environmental Accounting...*, p.170).

As long as there are no appropriate laws developed in the country, it is necessary to demand that TNCs operate in accordance with progressive laws of developed countries.

Nature Protection

In this sphere, we are struggling with serious problems. Should we recruit TNC financial resources into nature protection or not? Should we engage in joint activities with them or not? Should we accept financial support from TNCs or not? Because of the difficult social-economic situation in the countries of the region, these questions stand sharply before NGOs. On the one hand, NGOs would like to preserve their independence and reputation; on the other hand, the financial resources of TNCs could be used to conduct significant environmental protection work.

It is possible that the answer to these difficult questions lie in three-sided, jointly managed projects, for example, between nature protection institutions, TNCs and NGOs, targeting the resolution of a specific problem. TNCs could finance a specific action, for example, to plant trees. The NGO would monitor the implementation of the project (which would be carried out by the nature protection institution), as well as administer the use of resources, while not accepting any money from the TNCs for their organization.

On the Question of Joint Action with Other Social Movements

The only effective means to bring about an equal dialogue with TNCs (independent from the question of whether or not there will be long-term cooperation with TNCs – or the opposite) is solidarity among environmental organizations, trade unions, societies for the protection of consumer rights and other social movements. Voluntary cooperation must lie at the basis of such solidarity. As the points of agreement and common interest between “greens” and other social movements are not so very few, solidarity in the name of saving the earth and life on the planet should find support.

Of course, we need to answer many questions relating to interaction of NGOs and the public with TNCs. But we are facing serious problems, which we cannot ignore. It is necessary to search for the path to their resolution, and to do what is necessary now, while it is still not too late, and while there is still hope.

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WHO IS INVESTING IN WHOM? FOREIGN OIL COMPANIES IN KAZAKHSTAN

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*The following is from an interview with **Marat Muradovich Mailibayev**, candidate of geological sciences (Almaty, Kazakhstan). Mr. Mailibayev is a specialist in the field of prospecting, exploration and extraction of hydrocarbon resources and in the development of equipment and technology for the oil and gas industry. He has been working in Kazakhstan's oil and gas industry since 1957.*

Question: What, in your view, is the impact of the activity of transnational corporations (TNCs) in Kazakhstan on the socioeconomic and political situation?

Answer: TNCs have, in my opinion, insignificant influence on the country's political and socioeconomic situation. TNCs do not so much invest money in the economy as enrich themselves through the sale of Kazakhstan's national resources and through the evasion of taxes.

One of the main sources for filling the state's coffers consists of royalties (payment for development of mineral resources), the true dimensions of which are very difficult to determine. Another source of income is taxes on the profits the companies receive. However, TNCs strive to show that their production costs are virtually the same as their sales price, thereby hiding their profits. No profit, no taxes. Verifying their true production costs is practically impossible, since their contracts and agreements with the Kazakhstani government fail to stipulate auditing of such costs. The lack of auditing creates a loophole for legal trickery.

As an example, I can mention the Chevron company, which by using different prices for the sale of oil through its middlemen within Kazakhstan (about \$40/ton) and its sales on the external market (about \$120/ton) receives, in the end, immense profits. It turns out that Chevron, the "great

investor,” has spent on average \$410 million for petroleum extraction, and obtained from its sale of Kazakh oil, by the most modest estimate, some \$7.2 billion. A similar situation exists with other companies working at the Zheltybai, Ozen, and Zhanazhol deposits.

Thus, we can speak of “investment” of TNCs in the Kazakh economy only with great reservation. On the contrary, Kazakhstan, through its oil, enables TNCs to flourish. The reasons for such “contracts,” which lead to losses for national and local government budgets include the utter incompetence of high-ranking officials and corruption at all levels of power. All of this, together with the rise in Kazakhstan’s foreign debt, leads to a complete loss of the country’s economic independence, and thus to political instability.

As far as drilling on the shelf of the Northern Caspian by the world’s leading oil companies, I can say that this was a political decision by the country’s leadership, and not economic expediency. Our leaders want to show that Kazakhstan is a country developed enough to engage in offshore drilling, despite the fact that predicted [onshore] oil reserves within the boundaries of the Caspian Depression and the Ustyurt Plate are three times greater than those in the remainder of Kazakhstan, and the prospecting and extraction of oil three times cheaper than offshore. The participation of foreign companies in the development of the Caspian Shelf, in addition to future profits, can also be explained by the companies’ desire to gain experience working in a closed, shallow body of water.

Question: How do TNCs’ activities impact the environment?

Answer: TNCs certainly affect Kazakhstan’s environment, but the degree of their impact has not yet been precisely determined. Any manufacturing technology, even the most perfect, cannot prevent environmental impact. This means that companies should pay for environmental restoration – although when it comes to restoration, we can only speak in relative terms, since a new environment for life is created, which is not protection of nature in the strict sense of the word. For instance, the inhabitants of the United Arab Emirates have turned the desert into a flowering garden, while pushing aside local flora and fauna.

In Kazakhstan, TNCs have not cared for the environment, focusing their efforts for the most part on protecting their labor force and ensuring safety measures at their facilities. This is connected to the fact that at the TNCs’ enterprises, foreign specialists work alongside the local employees. The small amounts that have been paid for polluting the environment drown in the state budget and do not go towards the solution of environmental

problems. For the same reason, technical measures for environmental protection are absent at virtually all facilities in Kazakhstan. During Soviet times, things were stricter; without such technical measures, you couldn't do a thing. Now we refuse to use them, and no measures means no problem!

Yet another cause for concern is that fact that TNCs have effectively pushed local enterprises into polluting the environment. Due to the fact that TNCs have largely monopolized the export of raw materials abroad, it is difficult for domestic entrepreneurs to enter the international market. Therefore, in order to remain competitive, the most likely course for them is to lower their production costs by neglecting to follow environmental standards or reprocess their waste products.

Question: How do you rate overall the technology used by TNCs in Kazakhstan, compared to local technology and the technology employed in developed countries?

Answer: I would describe the situation with regard to the technology employed by TNCs as appalling. Companies export to Kazakhstan large quantities of used and utterly obsolete equipment. Of course, for our country, this is a step forward, but for them, it's the Stone Age!

I should note that the designs of domestic scientists and engineers have gone much further than those of the leading foreign companies, but they remain moldering on the shelves, rather than being employed in production. TNCs are not interested them either, since they need to find places for their obsolete equipment. In this way, the country effectively pays for old technology and worthless equipment, which overseas would be valued for the price of the scrap. And TNCs receive additional profit through lower costs for their goods and through the sale of their equipment. For the TNCs, this turns out to be the best form of recycling!

Question: What is your opinion of Kazakhstan's legislation in terms of regulating the activities of TNCs?

Answer: Our legislation for regulating the activities of enterprises extracting mineral resources, including TNCs, foresees only control and punishment, but not regulation of any kind. One clear example is the totally unnecessary legal document "Uniform Rules for the Development of Oil and Gas Deposits," which I consider to be interference in enterprises' internal affairs. Rules for labor protection, safety measures, work with explosives, environmental protection, and so on can be mandatory, but the choice of technology should remain the affair of the company itself. If requirements for environmental protection were strictly met, Chevron would have solved the question of sulfur utilization first, rather than stepping up

oil extraction at the Tengiz deposit. This would have been regulation, not only the of sale of oil, but of sulfur as well.

My participation in the state commission responsible for regulating the protection and use of mineral resources has convinced me that companies are violating the country's normative and legal requirements, with the tacit blessings of the state agencies involved. The goal of commissions, which act as regulatory organs, is to develop joint recommendations for the rational use of mineral resources, protection of the environment and introduction of new technologies. In reality, our commissions work to frighten enterprises and squeeze money out of them, not to seek real solutions to current problems.

An even more crucial task is reforming the means and methods for regulating all mining and drilling companies, since confusion and lack of transparency in the regulatory system for Kazakhstan's oil and gas sector costs the country hundreds of millions of dollars annually and threatens its energy security.

As a result, specialists at Kazakhstan's National Bank reported that the export of oil from offshore zones increased from 2% to 22% in 1999. According to government sources, such exports constituted nearly 63% of all oil exports. In this way, a significant share of oil is sold abroad at dumping prices, which is perfectly legal.

For instance, the companies Tengizchevroil, Aktobe munaigaz, and Hurricane Kumkol Munai exported oil at lowered prices (3-4 times lower than the world average). Sale at such prices was possible because of the lack of clear and strict requirements in Kazakhstani legislation for the sale of exported raw materials, which the aforementioned oil companies took advantage of.

Kazakhstan's oil strategy is carried out primarily within a "regime of confidentiality." The public does not know who signs oil contracts, how, or under what conditions, or where bonuses, investment, and revenues from oil sales go. The identity and methods of those conducting tenders and the distribution of petrodollars, etc., are also unknown.

At the same time, Kazakhstan, by many objective parameters, repeats the sad experience of the majority of traditional resource-producing (i.e., oil-producing) countries: the uncertain prospect of authoritarianism, an unstable legal base for business, amorphous reforms and economic crisis, the probability of future conflicts, and so forth.

Smirnov, S., "Kazakhstan's Oil Mirage", *Oil and Gas Vertical*, no. 11, 2000, pp. 62-66.

Question: How open are TNCs to the public and to state regulatory bodies?

Answer: I believe that the degree of access to companies' information is stipulated in the agreements between TNCs and the government of Kazakhstan. Therefore, the majority of information, including environmental information, is simply not accessible. Above all, this concerns economic indicators, including production costs, which are one of the main sources of TNCs' super-profits in Kazakhstan.

Question: Is it possible to interest TNCs in environmental protection?

Answer: I think that at the current stage, the answer is no. As I already noted, the overwhelming majority of protective measures taken by TNCs are aimed only at protecting their labor force. What happens beyond the boundaries of their enterprises to nature, the local population, or historical monuments, does not bother them, nor does it seem to bother local inspection officials. Until society demands that TNCs turn their attention to nature, they will not be active participants in its protection.

Material prepared by Sergey Solyanik



IMPORTANT LESSON

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The term “stakeholder” is currently in fashion in the West. It is a useful, bland, all-encompassing term that is increasingly applied to the various arenas where governments, business, and the public interact. In essence, a stakeholder is anyone who is concerned with or affected by a government or corporate decision – anyone who has a “stake” in its outcome. So when a company wishes to build a new facility, for example, nearby residents are stakeholders, as are local businesses, local government, employees, shareholders... and anyone else who feels they have an interest, one way or the other, in the coming change. It is a useful word, because it has a little bit of everything for everyone. “Stakeholders” are supposed to sit around the table and discuss the issue – ideally, arriving at a conclusion that is agreeable to everyone. But this phrase cuts both ways. Being a stakeholder grants a certain degree of legitimacy to environmentalists, local businesses and others who traditionally would not have been consulted in this decision-making process. But because it is such a bland, all-inclusive word, stakeholder also obscures the question of legitimacy. In making everyone an equal stakeholder, no one has priority – there is no distinguishing between legitimate needs, luxurious wants, and outright greed. And there is no acknowledgement made of anyone’s rights; everything is negotiable. A parent’s concern for contamination of groundwater is no less or more important, in the stakeholder process, than a gasoline station’s eagerness to sell to a few more passing trucks.

Although the term was never used, the recent seminar in Almaty on transnational corporations was all about stakeholders.

The seminar was a fascinating encounter between activists of the Caspian Basin countries, American activists, and on the last day, representatives of

TNCs. NGOs in the Caspian region are beginning to feel the impact of transnational corporations – on their political systems as much as on the economy and the environment – and are trying to find ways to deal with such powerful new actors. The seminar revealed interesting differences in philosophy on the question of TNCs but also interesting differences in methods of working together.

For the Americans present, with our history of corporate takeovers of the body politic in the last century, TNCs were largely painted as corruptors of an imperfect but viable democracy. We discussed the records of TNCs in different parts of the world and showed that, as political actors, TNCs are clearly not to be trusted. The problem in the U.S. has been that TNCs have largely usurped a political system and an economy that rightfully belong to the citizens; and the solution is to strengthen democracy and limit the power of corporations.

For NGOs in the Caspian region, the situation is more complicated. Many NGOs are deeply involved in various struggles for political freedoms, public accountability, environmental protection, and other hallmarks of a free and open society, even while the term “democracy” may have fallen into disfavor. But strengthening the hand of government against TNCs is often seen as a quixotic task when the government cooperates so well with foreign corporations, but is unaccountable to its own people. In this situation, the strategy of playing TNCs and government off each other is perhaps the best chance to achieve concrete results. But this is a difficult, dangerous strategy, and it is not clear that most NGOs are powerful enough to play it well.

The TNCs have their own approach to interacting with NGOs in the region: they have imported the stakeholder process. In doing so, they hope to manage – not crush – dissent. After all, the threat to a TNC’s operations comes not from the occasional money it must spend on environmental improvements or from the salaries of a few public relations officers designated to deal with NGOs. The threat comes from the possibility that unmanaged dissent could grow so loud that it would hurt their sales or worse, interrupt their production. The stakeholder process allows TNCs to deal with issues quietly, privately and well ahead of time, preventing any conflicts from spilling into the public limelight.

As in the West, the stakeholder process is a mixed blessing for NGOs, and this was reflected in the views of the various NGOs that participated. Some were more eager to cooperate with TNCs as a way of enhancing their own effectiveness, as well as putting pressure on governments. Others took a more confrontational approach, believing that to be more effective in

extracting concessions from the companies. Given the variety of circumstances, nations, and agendas represented at the meeting, it is no surprise that the participants sought many different paths in dealing with NGOs. There were some surprising points of unity, however. In particular, all the activists present agreed that NGO unity was of overwhelming importance in dealing with the TNCs. This implies a willingness to work together to hash out differences and a justified wariness of becoming embroiled in conflicts between NGOs working for ultimately the same ends.

Such unity, of course, is difficult to forge and even more difficult to maintain over the long run. The task is doubly complicated because of the diversity among NGOs represented; in order to effectively play TNCs and national governments against each other, each organization must retain significant flexibility and maneuvering room, which makes it difficult to enter into effective, campaign-based coalitions.

The solution to such an enigma, I believe, lies in a bottom-up approach. Many coalitions begin with a common statement of purpose, agreed-upon principles, and work their way down to programmatic details of cooperation. Such an agreement, however, would be too unwieldy to be effective over such a large and variegated group. So I think the way forward lies in smaller projects. Beginning with newsletters, shared databases, or information exchanges, the various NGOs in the region can each participate in small, concrete projects that enhance their own effectiveness and add to their experience of coalition work without limiting their ability to maneuver domestically. As these projects grow, the participating organizations will find it easier to coordinate work with groups outside their country.

The importance of developing this method of working together lies not only in its ability to help NGOs with their local struggles, but also in showing an alternative to the stakeholder idea. On the final day of the seminar, we held a roundtable with representatives from several TNCs, which dismayed them greatly. The representatives expected a stakeholder format: open discussion, but no accountability and no commitments. Instead, they found that they were expected to answer a series of questions that the NGOs had formulated, and wanted answered. This format demonstrated a point that I had made during the seminar: that TNCs should not be considered stakeholders in their own decisions. Although politically and economically powerful, they have no moral rights and no legitimate self-interest, other than serving the public. Neither the format of the meeting nor its implications were at all agreeable to the TNC representatives. For once, they found, they were not controlling the process of interaction.

This was probably our most important lesson in the seminar. The process of interaction has a huge effect on the outcome. To be effective in their campaigns, the NGOs of the Caspian basin need to pay attention to the process by which they cooperate with each other, as well as how they deal with the TNCs. Ultimately, the citizens of the Caspian region should set their own ground rules for dealing with TNCs.



INTERNATIONAL RIGHT TO KNOW

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Every day, globalization makes it easier for U.S. corporations to operate freely around the world. Yet there are no laws requiring these companies to inform citizens in the U.S. and around the world about their impact on the environment, workers and human rights.

That's why more than 200 environmental, labor, social justice, faith, and human rights organizations in the U.S. and around the world have joined together in a campaign to enact an INTERNATIONAL RIGHT TO KNOW (IRTK) law.

WHAT IS IRTK?

Modeled on domestic Right to Know laws, IRTK would require U.S. companies to report on the key environmental, labor and human practices of their overseas operations. Proposed components for an International Right to Know Law include:

Environmental Disclosure

Toxic Release; Air and Water Pollution; Natural Resource Extraction.

Labor Disclosure

Workplace Injuries and Fatalities; Hazardous Workplace Materials; Labor Complaints Against Employers.

Human Rights Disclosure

Contracts with Military and Police Force; Impacts on Indigenous Communities; Human Rights Complaints Against Companies.

WHY IRTK?

In a global economy, no corporation should be allowed to hide its record simply by operating overseas. No citizen, in any country, should be denied their right to know about business practices that affect their lives and the lives of their children. Recent protests at meetings of the World Trade

Organization, World Bank and International Monetary Fund illustrate a growing concern about globalization and the actions of corporations. The public is increasingly aware that trade and investment agreements enable big business to move from country to country around the globe, but place no requirements on corporations to operate responsibly.

US corporations should be held accountable for their impacts on the environment, human rights and workers around the world. Without visibility, there can be no accountability. It is time to end the veil of secrecy that shrouds corporate behavior at home and abroad. International Right to Know legislation would give citizens of every country access to basic information about the environmental, labor and human rights practices of companies.

Why is IRTK Important for the Countries of the Caspian Region?

Transnational corporations, such as major American oil companies, including Chevron and ExxonMobil, exert significant influence on the environmental, political, and economic situation in the countries of the Caspian region, in which they are operating. Under the conditions in the region – newly independent governments; existing authoritarian regimes; high levels of corruption; weak legal systems; poorly developed civil society, NGOs and labor unions – these prominent firms have already become a deciding factor in determining the development of these countries. There is an acute need to monitor the activities of TNCs in the Caspian region. One of the key elements of monitoring is ensuring access to information about the real activities of TNCs in the region. However, neither NGOs nor the governments of the region have access to such information about TNC activities in these countries.

Therefore, it is extremely important for NGOs of the Caspian region to organize a campaign to support the passage of the IRTK legislation in the U.S. In the event that this legislation is passed, NGOs of the Caspian countries will have a powerful instrument for monitoring and asserting pressure on TNCs.

A broad-based coalition coordinating a campaign for an International Right to Know meets regularly, forms strategies, and shares information about corporate practices worldwide. If you have any questions regarding the International Right to Know proposal and the coalition effort, please contact David Waskow at Friends of the Earth <dwaskow@foe.org>. Local contact is Sergey Solyanik at the Ecological Society Green Salvation <ecoalmati@nursat.kz>. IRTK campaign web-site <www.irtk.org>.



Information

**GREEN
SALVATION
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HIVOS

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Mission statement

Hivos is convinced that poverty is a consequence of unequal opportunities and an unfair distribution of knowledge, power, production and income – on a global scale and within national states. Our world can only be a sustainable and fair place to live if more people have access to the resources and the decision-making processes that determine their future. Nowadays, the information revolution offers us new ways of achieving this. Access for all is a motto that succinctly expresses the ideology and policy of Hivos.

Hivos, the Humanist Institute for Development Cooperation, wants to increase opportunities for people in the South and give them greater scope to develop themselves. Local organisations and community groups can play a key role in this. They support groups of citizens who defend their own interests and who fight for human rights and democratisation. Such groups build the foundations on which the structure of society is erected.

Hivos supports autonomous non-governmental organisations, that contribute to sustainable development. Hivos is their ally in the political debate on international cooperation. As an active member of Dutch and European networks, Hivos lobbies for a foreign policy that gives consideration to the interests of developing countries.

Policies

Hivos does not carry out projects or programmes itself, nor does it post development workers overseas. Hivos provides financial support and advice to local NGOs. These organisations carry out a wide range of activities at many different levels of society. They play a role in the way in which their society develops. Hivos always seeks out partners that are not afraid to point the way, that are not dogmatic and that welcome innovation.

Hivos takes an institutional approach in supporting organisations that enable people to stand up for their rights and that increase their access to decision-making. This entails support not only to the activities of the organisation, but also to the organisation itself: organisational and policy development, financial control, internal democracy and public accountability. Based on this same approach, Hivos encourages and fosters cooperation between organisations, social movements and national umbrella organisations.

Hivos supports organisations that are secular, autonomous and without government ties. Hivos places great value on association with large organisations and interest groups from the local community, selecting them on the basis of its policy priorities. At a national level, such organisations can be powerful champions of the interests of underprivileged groups. Community-based organisations constitute a second important group. Such grassroots initiatives can demonstrate that things can be done differently and better. Organisations that combine these two elements (influence at a national and a grassroots level) are particularly valuable. Hivos also supports NGOs that act as intermediaries and service providers if the services they offer are related to Hivos policy, if they are effective facilitators and promote access to decision-making. Network and umbrella organisations also receive support on a limited scale.

Hivos concentrates its activities geographically in a limited number of countries and regions. In Central Asia it limits its work to Kazakhstan and Kyrgyzstan.

In allocating its funding, Hivos gives priority to five special themes and sectors, which it likes to refer to as policy spearheads. They are:

1. economy and credit facilities
2. culture and the arts
3. gender, women and development
4. sustainable development
5. human rights and AIDS

In the course of time Hivos' programme in Central Asia has stabilized. In 2001 it was at a funding level of almost 1.2 million euro on annual basis:

0.7 million in Kazakhstan and 0.5 million in Kyrgyzstan. In Kazakhstan, Hivos puts a strong emphasis on environmental issues and sustainable development. In 2001, 40% of the funds in Kazakhstan was transferred to environmental NGOs: Green Salvation and the Green Women in Almaty, EcoCenter Karaganda and EcoMuseum in Karaganda, and Milieukontakt Oost-Europa in Amsterdam and Almaty. Other significant funding in Kazakhstan was provided to NGOs in the sphere of gender/women's development (20%) and the cultural sector (19%).

Environment: sustainable development

In 1999, a new policy paper defined Hivos' strategy on the environment. This strategy revolves around sustainable development: economic, political and socio-cultural developments cannot be taken out of their ecological context, which is formed by the limited natural resources available to us.

The new strategy – development from the perspective of the environment – emerges from Hivos' experience with environmental policy in the past ten years. Hivos has successfully established a sound collaborative structure with organisations prominent in the field of sustainable development. However, it has been extremely difficult to convince other partners to integrate sustainable development into their activities.

The policy paper presents a long-term vision of how this integration can be accomplished: it concretely defines the common ground between human rights, gender and the environment, such as the right to live and work in a healthy environment. Hivos supports organisations that work on that common ground – for example, organisations that advocate local ownership of natural resources. The paper also explains how economic and ecological development can be integrated. The new policy gives high priority to groups that promote technologies and production processes, which are friendly to humankind and the environment alike. In formulating and elaborating this environmental policy, Hivos works together with organisations such as Vereniging Milieudedefensie, Friends of the Earth International and IFOAM (International Federation of Organic Agricultural Movements).

Green Salvation in Almaty was one of the first partners of Hivos in Central Asia. The start of our cooperation dates back to mid-1994.

If you would like further information, please contact us at the address mentioned above. Documentation (in English and Russian) is available on the basic principles, criteria and implementation of overall Hivos policy and policy in respect of the special priorities.