

**LIGHT FROM THE TREES: THE STORY OF MINORS
OPOSA AND THE RUSSIAN FOREST CASES**

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TABLE OF CONTENTS

I. INTRODUCTION	2
II. MINORS OPOSA.....	3
1. The Forests.....	4
2. Antonio Oposa	8
3. <i>Minors Oposa v. Factoran</i>	10
4. Life after <i>Minors Oposa</i>	13
5. Death after <i>Minors Oposa</i>	17
III. THE RUSSIAN FOREST CASES	19
1. The Forests.....	19
2. The Special Forests	21
3. The Building Storm.....	23
4. <i>Zlotnikova T.V. et al v. Russian Federation</i>	26
5. Managed Democracy.....	30

I. INTRODUCTION

This article describes two lawsuits in the late twentieth century that changed their countries in ways from which there will be no return. One took place in the Philippines, just emerging from the near-dictatorship of President Fernando Marcos. The second arose in Russia, following nearly a century of communist rule. They have two things in common. They declared the rights of their citizens to challenge, and reverse, government decisions. And they were about trees.

There is something about trees that test the soul. Standing alone or in dense groves, they are inherently beautiful and provide a host of services almost too subtle to measure. Measured by the board foot, however, they are ready cash -- or they may stand in the way of development that will make even more cash -- and so the battle is joined. More likely than not the trees will yield, but not the *idea* of trees, and so the complex that replaces them will be called The Oaks or Greenwood Forest. As cynical

as these names appear, they also reflect -- or we would use other names -- the lingering power of an ancient bond.

It was President Theodore Roosevelt who once remarked, "The American had but one thought about a tree ... and that was to cut it down."¹ In this, we were certainly not alone. Worldwide, the struggle over the fate of trees has always been one between the heart and the purse. It helped usher in a radical, new phenomenon of the late twentieth century that had no name as it was emerging but would come to be called environmental law.

Environmental law was, and is, revolutionary. To be sure, it has brought a measure of environmental protection to the world. But its larger impact has been to bring a new kind of democracy, grassroots-driven, bottom up, in which ordinary citizens could haul their own governments into court and call them to account for misfeasance, malfeasance, and flat illegality. In this aspect, environmental law may prove to be the most catalyzing force in the world towards the oft-heralded, less oft-practiced, rule of law. The generator for a surprising number of these legal actions is trees. Ask the United States Forest Service, whose management policies are constantly challenged by those with differing views about the role of public forests, about what trees are for. And so it was in the Philippines and in Russia. People care enough about trees to take extraordinary measures. In these two cases, with extraordinary results.

We need one more introductory word, if only in the sense of disclosure. It is true that environmental law has enabled ordinary citizens to gainsay government, to put officialdom to the proof, but the kinds of people who bring these cases are anything but ordinary. It is stigma enough to challenge power even in some parts of the United States. In many countries of the developing world, and others with thin facsimiles of democracy, it can be over the edge. The kinds of people who launch these actions may end up harassed, or in jail, or dead. We will meet two such people in these histories, Antonio Oposa and Vera Mishencko. They are still alive and kicking, and they would be as unusual as the cases they brought but for the fact that they are among the first born of a small galaxy of similar lawyers around the world who are emulating what they did and advancing it small steps beyond. In this sense they are discoverers. The rest of us follow.

II. MINORS OPOSA

In the early 1990's an unflagged freighter pulled out of the island of Luzan, the largest of more than 7,000 pieces of the Philippine archipelago spread over half a million square miles of water, each with its own jagged coastline, impossible to police.² On deck, in open view, was yet another illegal harvest of the last remaining virgin timber from a country so vast in forests that it had until recently supplied the world, and was now reduced to importing its wood from abroad. While local mills and foreign corporations stole the rest.

Suddenly, out of the air, came the sound of a military helicopter, louder and louder, hovering over the ship now, lowering a line to the deck, on which some tiny figures could be seen shimmying down, alone. Surprisingly, perhaps fortunately, there was no one in view. One of the men who boarded, a lawyer from Manila, opened up his computer and typed out a warrant. The captain and the ship owner were arrested. Please meet Antonio Oposa.

Oposa had launched an all-out assault on illegal logging. He created a multi-agency task force to enforce the law, enlisted the help of local communities who had long believed (with good reason) that the government was part of problem,³ and then went in with the troopers. They seized a raft of recently cut logs floating alongside a company dock, held a hearing on the spot, and six hours later the owner and operators were in jail.⁴ They made an amphibious assault against another timber operator in Isabela.⁵ On the island of Butuan they broke down the doors.⁶ They brought in the press, the cameras and the reporters, raid by raid, sending the message: this is a new day.⁷ Oposa's enforcement philosophy was very simple: Swift, Painful and Public.⁸

Turning next to the seas, he took on the illegal dynamite fishery. He organized another strike force, warning the fishers at first, then raiding their houses and confiscating their bombs.⁹ When one of the participants ran away, Oposa called him on his cell phone and talked him into surrendering. Then he filed a complaint against the local harbor captain for "failing to enforce laws and regulations relating to pollution control and protection of the environment".¹⁰ Then he persuaded the dynamite fishers to switch sides and patrol the fishing grounds on their own.¹¹ Which they are now doing.¹²

Pieces of a larger frame. Within the next few years Antonio Oposa would author a first-ever compendium of Philippine environmental law,¹³ and a book entitled "The Laws of Nature and Other Stories"¹⁴ which captures the spectrum of environmental issues with elegant simplicity. He would bring lawsuits, start non-governmental organizations, form collaborative working groups on intractable problems, teach law to young adults, teach ecology to grade-schoolers, speak, cajole, listen, raise hell and seek peace.¹⁵ He will say that he is not driven by the law.¹⁶ Rather, he is driven by what he sees as a beautiful and imperiled planet, and the hope, as he wrote in a recent dedication of his book, that the young, "in their time ... will do better than we do in ours."¹⁷ In a way, a reluctant lawyer.

Yet the one thing for which Antonio Oposa will be remembered above all else, around the world, is a lawsuit which he brought on behalf of his children, the children of friends, and children yet unborn, to save the rapidly vanishing forests of the Philippines. The case is known as Minors Oposa.¹⁸

1. The Forests

"Somehow when we are in the presence of a large tree or in a grove of trees, especially when we are inside a forest, we feel a certain sense of

exhilaration and surge of seeming spiritual energy. This is the feeling of enchantment that we experience when we find a link to the trees. After all, we are each others counterparts – both being climax species of our respective kingdoms.”

Antonio Oposa, 2003¹⁹

“The wood of the Philippines can supply the furniture of the world for a century to come ... And the wood and other products of the Philippines supply what we need and cannot ourselves produce.”

Alfred Beveridge, United States Senate, 1900²⁰

The forests that moved Oposa were the dominant feature of a landscape that was basically mountains, trees and water for all of recorded time. They harbored, and continue to harbor, an astonishing variety of plants and animals. On a square kilometer of native forest you might find over 1,000 plant species.²¹ One mountain preserve holds more varieties than the entire United States.²² Only, now, these preserves huddle like small museums on the landscape. What little primary forest remains is found on remote islands like Palawan, the last sanctuary for several rare forms of life, none more impressive than an enormous raptor that snatches monkeys out of trees -- the Philippine eagle – the national symbol and as good a symbol as any for the destruction to come.²³

To be sure, eagles are everywhere the symbols of power and national pride, but the Philippine Monkey Eating Eagle (an awesome name in its own right) is a case apart.²⁴ The height of a Great Dane at rest, where it peers out from a cowl of yellow feathers, it has a wingspan of over eight feet and the ability to glide effortlessly over the dense forests like a para-wing, or to cut through the trees at speeds beyond 50 miles an hour to take small animals from the high canopy. Charles Lindberg called them “[a]ir’s noblest flyers.”²⁵ Legend has it that, long ago, the sky was so close to the sea that you could reach up and touch it.²⁶ But he, being the eagle, harbion, the king bird, pecked off parts of the sky and used it to make his nest. Provoked by the eagle, the sky rained down rocks on him, the largest it could find. They fell into the sea, and this is how the Philippine islands were formed. Not, then, your ordinary bird, and completely dependent on the carpet of tropical and subtropical forests of the archipelago.

At the close of the nineteenth century, despite the inroads of Spanish rule, approximately nine-tenths of the Philippines had its original tree cover, and an estimated ten thousand of its prized eagles.²⁷ Less than a century later some 100 million acres of the original forests had been reduced to about two million, and dropping.²⁸ So too with the national symbol, which had dropped to about thirty pairs in the wild, another thirty in captivity, and made the International Conservation Union Red List of most critically endangered species hands down.²⁹

This is a story of plunder that has no villains. Only increasingly aggressive users. The forests were the original, one-stop environment, a vast larder of food, shade, shelter, fuel, clothing and building materials³⁰ managed by the datu, a tribal chief who set harvest limits for each community.³¹ Since, at least the time of Christ, Philippine forest products joined a brisk commerce with oared sloops and lateen rigs from Arabia, India and China.³² It was not until the arrival of the Europeans with different ships and different agendas that land use patterns began to change. Starting with Magellan, a Portuguese sailing precariously under the flag of Sevilla, the Spanish authorities were after the spice trade, and only incidentally the occupation of the land.³³ The land seekers were the Church, and the Spanish civil bureaucracy exercised whatever control it could over Philippine affairs, from afar (indeed, from Mexico), by granting land concessions as bargaining chips to a ruling “friarocracy” and to cooperating, local chieftains.³⁴ One history concludes, “Spanish rule had two lasting effects on Philippine society; the near universal conversion of the population to Roman Catholicism and the creation of a landed elite.”³⁵ The pattern of patronage was set.

The impacts of the west on the Philippine forests were, at first, less pronounced. The Spanish remained more interested in trade than settlement, and although they initiated a kind of slash-and-burn agriculture with its own name, kaingin,³⁶ sending lowland forests up to the sky in dark columns of smoke, and although they cut timber as well for drying the money crop of tobacco³⁷ they did not see trees as trade goods. Besides, as a naval power on increasingly-competitive seas, they were also interested in perpetuating wood sources for the hulls of ships, decks, masts and barrel staves.³⁸ And so, while tobacco and rice crops had eliminated some 5 million acres of trees by around 1800, the vast forest inventory remained intact.³⁹ To maintain it, the Spanish set up a forestry administration (Inspeccion General de Montes) in 1863,⁴⁰ and when that office’s attempts to license logging and control illegal harvests proved ineffectual, Spain declared a colony-wide ban on slash-and-burn kaingin and banned commercial logging outright on islands as large as Cebu.⁴¹ Then came the Americans.

In 1898, the Americans invaded, ostensibly to defeat the Spanish, and went on to prosecute a war against Philippine independence (a movement that at the time of the American intervention had already wrested control from the Spanish over all but Manila)⁴² that would cost as many Filipino lives as the Second World War.⁴³ From that occupation, and the reoccupation by General MacArthur and his administration fifty years later, arose many western traditions including a familiar-looking constitution and government, and the vigorous exploitation of natural resources. To the Americans, the forests of the Philippines were The Prize, reason enough for military occupation and control.⁴⁴ The trees began to fall in staggering numbers, and despite the lofty principles of American forestry, virtually out of control.⁴⁵ True, the US at least made efforts at management. Under the guidance of Gifford Pinchot, the father of the US Forest Service, the Philippines adopted forest surveys, mapping, inventories, timber processing, even a new school of scientific forestry, all the trappings of Pinchot’s wise-use philosophy.⁴⁶ But the basic American message was: get out the cut,⁴⁷ and the Philippine government took it to heart. By 1934, only 50 million acres, less than half the original inventory, remained.⁴⁸ The only thing that stopped the party was the war.

Following the war, wildcat logging boomed once more and soon the islands were supplying one-third of the world's lumber, much of it en masse, some as rare and costly as Philippine mahogany, none of it sustainable.⁴⁹ The United States was the largest importer in the west, while its new-found ally, Japan, was the largest in the east;⁵⁰ ironically, the Asian theater's two mortal enemies had joined forces to consume the forests of the Philippines. Not that the Filipinos were unwilling. They saw the same thing everyone else saw, a ready source of foreign currency, apparently without end. Timber concessions went to cronies of the President, the food stuff for a system of political control started by the Spanish two centuries before.⁵¹ By the mid 1950's, the Philippines were the world largest exporter of timber.⁵² At the same time, the government was promoting another kaingin for new settlements and agriculture, converting another one million acres of forest cover a year.⁵³ Of course, island by island, the forests continued to crash.

The national response was to legislate reform, and continue business as usual. In the 1960's, timber licensing agreements (TLA's) for commercial logging and a Presidential Directive against illegal cutting provided at least the appearance of taking charge.⁵⁴ Before the 1969 elections President Marcos announced the suspension of new concessions, to demonstrate his support for the new-fangled but apparently-popular idea of environmental protection.⁵⁵ After his re-election the suspension was reduced to one year, and then disappeared altogether from radar.⁵⁶ The cutting continued. In 1975 a new forestry law mandated the multiple-use, sustained yield policies of US management, restricted log exports, and even tried to involve upland communities in forest protection.⁵⁷ To little avail, against the politics of money and the politics of politics. President Marcos, by the late 1970's a ruler of virtually unlimited powers, could declare:

“If necessary, I will cancel all licenses to protect the forest ... I have seen fortunes made overnight from the forest, and the wastage, and it must makes my skin crawl to realize that there are many Filipinos who just don't care about the future generations' legacy in the way of forest resources.”⁵⁸

At the same time he was dealing TLAs to political allies in the order of 100,000 acres of forest land a piece, more than double the typical commercial allotments.⁵⁹ Marcos family members were also conveniently distributed around the Philippine timber industry; the President's mother was the chairman of the board of one major wood processing company, and was a major shareholder and board member of a competitor.⁶⁰ In 1971 a handful of concessionaires controlled some 30 million acres of the remaining Philippine forests, from which they earned an average of \$800 million a year.⁶¹ Laws or no laws, the great barbecue went on.

By the late 1980's, only four percent of Philippines remained in original forest cover, hiding as if in exile in steep ravines and on distant lands like Palawan.⁶² The big monies in forestry had played out, and its environmental bills were coming due:

eroded hillsides, polluted rivers, dying reefs, water shortages and wasting floods.⁶³ A different momentum was building. In 1987, a new Constitution declared a right to a “balanced and healthful ecology”, and required forest lands to be delineated and “conserved”.⁶⁴ That same year, President Aquino created a new Department of Environment and Natural Resources in whose name and mandate the word “environment” was added, the word “exploit” was deleted, and new phrases like “sustainable uses” and “enhancement of the quality of the environment” appeared.⁶⁵ But the cutting continued. There were still more than 100 major TLAs in action, fifty year contracts with decades left on them, and they were moving on last places like Palawan.⁶⁶ The question was whether the new laws and phrases had any meaning.

2. Antonio Oposa

“The law is not a dead language that should be understood only in the gobbledygook of lawyers, judges, legislators and the members of the arthritic governmental bureaucracy. The law, and the reason for the law, must be popularized in the same manner that particular brands of soft drinks are popular the world over.”

Antonio Oposa⁶⁷

Nobody knows how the fire broke out.⁶⁸ Young Tony Oposa, home from law school on Christmas break, woke up in the night to the smoke and roar of his house in flames. He was sleeping upstairs. Between him and the front door was an entire level of fire. He says that he thought to himself, “If I die, I’d like for people to know I died fighting”. So he went downstairs into the heat, the door that was supposed to be locked simply opened for him, and he went out. His head and his arms were on fire and his skin was dripping like wax. Two other people didn’t make it. From then on, Tony Oposa was a little more serious, a little more focused, and ready to take up an amazing journey. Which would be to fight for life, writ large.

It was hardly pre-ordained that Oposa would be an environmentalist, a lawyer, or just about anything of note. Hyperactive as a child, trouble-making in a mischief sort of way, he seemed headed for the life of a light-weight among the cream of conservative staunchly-Catholic Philippine society. His father, a well-known surgeon, and his mother, with early signs of cancer, went to the United States, leaving young Oposa with wealthy grandparents in Manila, where he recalls enjoying every luxury and attention a boy could want. Rather aimlessly, he drifted into a degree in business administration, following which, his counter-cultural strain appearing, he went to Bantayan Island off of Cebu and lived “like Robinson Crusoe” (complete with manservant),⁶⁹ cooking fish and rice on an open fire and sleeping on bare floor. Hardly surprising, then, that on returning to Manila, he tried and quit jobs in trade and banking. He didn’t want to spend his life “counting the money of other people”.⁷⁰ Instead, he took up speed reading. He wanted to learn how to “understand and enjoy words”.⁷¹

Which led him to law school, again for no visible purpose, graduating in 1982. His only environmental accomplishment to that point was persuading law fraternities into a competition to plant trees in front of the school. A small, tactical plan, nonetheless, to enlist the energies of others and the seed for larger strategies to come. Oposa went on to marry, but he became restless to the point that his wife (an accountant) finally told him, one senses with no small frustration, to “find a specialty”.⁷² But the only thing he really cared about was nature, and there was no such specialty for lawyers. As he was wont to say, “the fish can’t pay my fee”.⁷³

He consulted with his law professors, one of whom went on to become a member of the Supreme Court, and found an interest in environmental law, but not the opportunity. So he took a scholarship to study in Oslo, Norway, and returned with a novel idea: that the whole notion of environmental policy was not about protecting him, nor even his children, but children yet to come. He came back to his island of Cebu and was shocked to find that the trees were gone; “I walked up in the mountains one day,” he later wrote, “and did not see a single hectare of forest.”⁷⁴ It was not just Cebu. He happened across satellite photographs of the Philippine rainforest, then, and now.⁷⁵ The images fell on a ready mind. Only fragments of tree canopy remained. The more he looked into it, the worse it appeared. If there was a defining moment, this was it. Antonio Oposa had a cause. He “uprooted” his family from the island, to Manila.⁷⁶ He didn’t know how, but he would practice environmental law.

It was never just about the trees. Oposa saw an entire history collapsing. These same forests had hosted indigenous populations that spoke more than sixty different languages.⁷⁷ Forest roads were cutting into their sanctuaries and hunting grounds like Panzer movements, destroying not only their livelihoods but the natural capital of the country, for coffers abroad.⁷⁸ Forest soils were depleted and washing away like so much waste.⁷⁹ An entire and very special universe of humans, plants and animals was on the brink. It made no sense. He would later explain:

“The liquidation of more than 90% of the Philippines’ primary forests from the mid 1960’s made a few hundred families US \$42 billion richer; but it left 18 million upland dwellers economically, and the rest of the economy, ecologically, much poorer.”⁸⁰

It was about justice.

A few years out of law school, Oposa formed the Philippine Ecological Network, one of the early environmental organizations in the country and the first dedicated to the use of law.⁸¹ The timing was propitious. The country had just adopted some fine-sounding legal principles, and launched the new Department of Environment and Natural Resources to carry them out. As the Network’s President, Oposa wrote to the incoming Department Secretary, Fulgencio Factoran, to discuss the abolition of deforestation.⁸² The letter was a bit strong: it demanded that all logging concessions be terminated within 15 days.⁸³ To the young attorney’s surprise,⁸⁴ the Secretary (who

was also an attorney) not only replied to his letter in person, but he arranged a personal meeting.⁸⁵

The meeting introduced Oposa to the realpolitik of environmental policy. Secretary Factoran was quite sympathetic to his objectives, and wanted to change forest policy; he had little support, however, in the Congress and less in the Administration.⁸⁶ Fine sounding language in laws were one thing, but no one wanted an “environmental coup”.⁸⁷ The Secretary’s hands were further tied because the Department’s budget was subject to legislative approval, and could be hatched in a heartbeat. Factoran would provide necessary information. But Oposa would have to sue.⁸⁸ He was only a few years out of law school. This would be his first environmental case. And so, he brought it.

3. Minors Oposa v Factoran

“Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self perpetuation ... the advancement of which might even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of mankind.”⁸⁹

Justice Hilario Davide, Supreme Court of the Philippines

The threshold question was whom to sue.⁹⁰ The most obvious targets were the logging companies who, after all, were the ones cutting down the trees. The difficulty was that, the companies held signed and sealed government permits allowing them to log for decades into the future. They had at their disposal, further, stables of the countries best lawyers ready to bog down the claims in piles of paperwork, supported by hot-and-cold running legislators and politicians on tap as well.⁹¹ The Philippines ranked high among the politically-corrupt countries of the world,⁹² and its judiciary was also a suspect quantity.⁹³ All it took was a few, quiet phone calls and the case could simply disappear. As a legal and practical matter, then, the only feasible defendant was the Department of Environment and Natural Resources, friend or otherwise in the affair.⁹⁴

To the Philippine Ecological Network, the facts behind Minors Oposa were overwhelming. The Department of Environment and Natural Resources and its predecessors had 92 long-term TLAs, outstanding for over ten million acres of virgin timber, and was considering yet more.⁹⁵ That was already five times the amount of original forest left in the entire country.⁹⁶ Hillsides were sliding into ravines, soil runoff was smothering the coral reefs, entire species were disappearing.⁹⁷ Clearly, this was wrong. The challenge, was to prove that it was also illegal and that the real parties in interest, the proper parties to blow the whistle, harkening back to the idea Oposa had returned with from Norway, were the children and the future of the country, children yet

unborn. This was Oposa's vision from the start. What he saw wrong here was an attack on posterity. And a way to frame the case that fused – for the media, the public and the courts – the wrong with the illegal.

There was also the matter of who, among the living, would dare to bring the suit, in their own names, against the government. Oposa recruited a few friends and family members to join him, with their children, but none had the appetite to go first (“one can imagine how skeptical and afraid they were, why the heck would we sue Government?”)⁹⁸ Their fears were understandable. One logging company – out of the 92 concessions at issue – “could simply hire someone to have me shot and killed.” They insisted that, since the suit was his idea, Oposa's children would go first. His oldest was 3½ year old; his youngest nine months. Hence the caption, Minors Oposa.

The suit was filed, Tony Oposa and his children, other children and their parents, unnamed children of the future, and the parents of the named children, and the Philippine Ecological Network versus Secretary Factoran who, whatever his sympathies, was represented by state attorneys sworn to defend government actions.⁹⁹ Originally styled as a “taxpayers action” on behalf of all Filipinos,¹⁰⁰ and with a rhetorical extravagance that few American lawyers would dare (“the unabated hemorrhage of the country's vital life-support systems and continued rape of Mother Earth”),¹⁰¹ the complaint alleged violations of the environmental protection provisions of the Constitution and the sustainable use mandate of the Executive Order establishing the Environment and Natural Resources agency.¹⁰² It sought nothing less than the cancellation of all existing TLA's and an injunction against processing new ones. The whole enchilada.

They lost.¹⁰³ The government filed a motion to dismiss, and the case sat for nearly a year.¹⁰⁴ Finally, without hearing oral argument, the trial court found the complaint short on facts (“replete with vague assumptions and vague conclusions based on unverified data”) and shorter on law. It failed to allege, “with sufficient definiteness”, either a “specific legal right they are seeking to enforce”, or a “specific legal wrong they are seeking to prevent.”¹⁰⁵ Nothing in the Constitution, you could hear it thinking, prohibited logging. Furthermore, the TLAs in dispute were so “impressed with political color” and “public policy” that judicial review of them would do violence to the constitutional separation of powers.¹⁰⁶ These were executive actions. Were this not enough, the court added, whatever platitudes the Constitution may offer about the environment, it explicitly guaranteed that contracts would be free of impairment, and relief such as that requested by Oposa would require more than impairment of the TLA contracts; it would eliminate them.¹⁰⁷ Three very large strikes. A fourth was yet to come.

Oposa appealed to the Supreme Court, at which point the Solicitor General questioned, for the first time, the right of Oposa to represent entities as diffuse as the rights of all Filipinos, to say nothing of children yet unborn.¹⁰⁸ Unwilling to abandon his theory, Oposa came across writings by an American scholar that spoke in terms of “intergenerational equity”,¹⁰⁹ and the term captured his vision.¹¹⁰ He had never heard

the phrase, but it was precisely what he had been thinking, and what he was convinced the Constitution meant. He had no law on his side for this point (nor, in truth, any law contrary; the proposition was new), but he had the credibility of a US publication and from then on it would be up to the facts, the argument, and the judges.¹¹¹ The Philippine Supreme Court then did four astonishing things. It ruled for Oposa on every argument.

The opinion was written by Justice Hilario G. Davide, Jr, the Court's most newly-appointed member, and joined by ten other justices of the Court. Three members took no part. Only one member wrote separately, to concur. These numbers are all the more astonishing for what Justice Davide had to say. He reads in part like poetry. In other parts he reads like Oposa himself. Turning first to the issue of the unborn children, Oposa had the right to represent his generation's interest in environmental quality, and that of succeeding generations. The right naturally flowed, in the Court's mind, from Constitution's chosen language, "the rhythm and harmony of nature".¹¹² Nature implied "the created world in its entirety".¹¹³ The maintenance of its "rhythm and harmony" included "indispensably" "the "judicious disposition, utilization, management, renewal and conservation" of the country's resources, so that they would be "equitably accessible to the present as well as future generations".¹¹⁴ Each generation, therefore, held a "responsibility to the next" to preserve nature.¹¹⁵ That obligation was the basis for its standing to sue, for its own sake and for those to come.

So far so good, but at this point Oposa et. al. were only past the courthouse door. The next step of the opinion was equally breathtaking. Section 16 of the Constitution, Justice Davide declared, not only accorded the procedural right to litigate but substantive right to protection as well. The principles of environmental protection it embraced were so fundamental that they had been law all along, in the way of natural law, even had the Constitution said nothing about them.¹¹⁶ Indeed, these principles were so fundamental (they were "assumed to exist from the inception of mankind")¹¹⁷ that they could even trump enumerated provisions of the Bill of Rights. Finishing with a flourish, were such rights not implied: "... the day would not be too far when all else would be lost not only for the present generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life."¹¹⁸

This said, the Court was not about to let the impairment of contracts provision stand in the way. In the first instance, it found the TLAs not to be contracts at all in the legal sense, but rather licenses that were capable of being withdrawn for the public welfare.¹¹⁹ Even looked on as contracts, the Court continued, the case did not involve a law or an executive order canceling the TLAs (clearly, though, this is what the plaintiffs were seeking), and even if it had, cancellation would be justifiable under these circumstances as a valid exercise of the police power.¹²⁰

Having rolled this far, the Court turned last to the leave-it-to-the-politicians, separation of powers argument, finding ample precedent to support judicial review of government actions. The Oposa case did not put "policy formation" by the executive at

issue.¹²¹ What was involved, rather, was the enforcement of a right expressed in law. Even did this right implicate politics, the Constitution had expanded judicial power to “determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction” by any branch of government.¹²² Your decision to make, Department of Environment and Natural Resources, but our decision to review.

Of the eleven justices sitting, this was the opinion of ten. It would be hard to imagine ten of eleven votes in favor of any of the four conclusions just described, from any circuit court of appeals in the United States, much less the Supreme Court, at any time in history. The opinion was a bombshell. Not just one bomb, several. Where in the world, one might ask, did it come from? From no single source, doubtless, but one may reasonably postulate several contributors. The judges in this case, like their country, were coming off decades of quasi-dictatorial rule, the antithesis of law, and were asserting their new role. At the same time, the late 1980's, the Philippines was catching the first, heady wave of environmental enthusiasm that had swept the US two decades before, and front and center, environmental mis-management writ large, was the open scandal of forest management. New ink was barely dry on the far-reaching and aspirational declarations of its Constitution. The politicians may not have been totally ready for the message, but the courts -- in many countries both the most educated and the “least political” branch of government -- were less shackled to the past and more free to change course. Justice Davide, who, one has the sense, grew into environmental literacy with the experience of this case, went on to lecture to international audiences on the role of an independent judiciary in environmental protection, and the need for a corollary offense in legal and public education.¹²³ Pure Antonio Oposa.

At the end of the day, however, one senses that what won this case was the overwhelming, remorseless, and no-escape mountain of facts. The Court's detailed recitation of Oposa's allegations – a parade of horrors – shows that it understood them, and was impressed.¹²⁴ The Philippines had taken their greatest natural treasure and turned it into a liability, impoverishing everyone. There seemed no other way to stop the train. At times, hard cases make great law.

4. Life after Minors Oposa

“The Court's spectacular pronouncement that the children had standing to sue even on behalf of those generations not yet born is merely dictum. ... Worse, the pronouncement on standing to sue for future generations is useless, because the same results could have been achieved had the petitioners filed the case to protect only their own right to a balanced and healthful ecology. ... The Philippine Supreme Court did not craft anything new but merely reiterated the directives of the Constitution and Congress.”

Assistant Professor, Philippines College of Law, 2003¹²⁵

“In the area of environmental law, extraordinary expertise is required of all judges. This field will challenge judges to decide cases on genetics, clean air standards, pollution and its environmental effects across international borders, among many other concerns. ... More often than not we will be confronted with novel issues that will necessitate an imaginative or resourceful response that nevertheless complies with the local legal framework. In the Philippines, for instance, the Supreme Court established the doctrine of inter-generational responsibility in the case of *Oposa Factoran* [citation omitted], as it faced the issue of standing of a group of children who questioned the logging rights of a lumber company.”

Justice Hilario Davide, 2004

At first glance, life after Minors Oposa appears very similar to life before it. The sun still rises and then it sets and in between the battle between exploiting the planet for short term gain and holding on it for longer reasons continues on every island of the Philippines, as it does on every continent of the globe. The great trees that moved this case continue to fall, much less rapidly, but then again there are fewer left to cut.¹²⁶ After the Court ruling, the case went back to the trial court for examination of the logging concessions ... where it disappeared.¹²⁷ Oposa and the children did not pursue it.¹²⁸ At the end of 2001, pre-existing timber leasing agreements still covered some 860,000 acres of forest.¹²⁹ Of 3,000 native tree species, 35 were classified as endangered and another 46 as critically endangered.¹³⁰ In 1991 a tropical storm had swept the Philippines and brought an entire, recently logged mountainside down on lowland villages.¹³¹ Thousands had died.¹³² In 1999 another heavy rainstorm hit a denuded hillside and did exactly the same thing,¹³³ and yet another, again, in 2006.¹³⁴ Hundreds more died. You could look at Minors Oposa and conclude: nothing happened. Some, in fact, have.¹³⁵ Pardon the metaphor, but they miss the forest for the trees.

The Supreme Court opinion dealt government-sanctioned, commercial timbering of native forests in the Philippines a legal and psychological blow from which it will not recover. During the proceedings of the case, Secretary Factoran issued an administrative order that prohibited new logging concessions on the remaining virgin stands.¹³⁶ The Secretary, as we have seen, had always been sympathetic, but the case gave him the political cover to act: Environmentalists were pressing, the media was in full cry, and the courts had his program under review.¹³⁷ There were 142 TLAs in the mid 1980's, when the issue came to Oposa's attention, 92 when he filed suit, 41 when the case was decided, and 19 remaining in 2001.¹³⁸ By early 2006 there were only three timber leases still in effect, one more inactive, and one under review, all set to expire within the next five years.¹³⁹ The annual rate of deforestation of more than 20 percent had fallen to 2.1 percent.¹⁴⁰ Clearly, none of these reductions were ordered by the Court. But the results were foreordained, and a vehicle to compel them as well, if the government failed to act.

On the other hand, illegal logging boomed. There is major money in tall timber, the forests are remote, surveillance is rudimentary, and big trees continue to fall. The government has attempted to crack down on illegal loggers, securing several hundred convictions since 1995 when its program began, up from zero prior to 1992.¹⁴¹ It has tried export bans, manifest programs that track timber shipments like hazardous waste and repeated enforcement raids, but the headlines tell a sad story: “DENR cancels 8,000 timber permits due to illegal logging,” “Filipino region imposes logging ban,” “14 draw prison terms for illegal logging,” “Ban on illegal activities in Shilan forest sought,” “Group says Sierra Madre rape goes on,” “Rebel group claims collusion in Caroga log sector,” “DENR Quezon head axed over logging.”¹⁴² In the 1990’s, backed by international funding, the government experimented with community-based task forces to control the game.¹⁴³ To a degree they worked, but the funding ran out and the cut flared up again wherever the trees could be found.¹⁴⁴ To more than 20 million Filipinos living in the interior, many of them indigenous peoples, and to many timber-short countries willing to pay whatever is necessary, the lure of illegal logging is irresistible.¹⁴⁵

And so the fight rages on, wherever the big trees remain. In Russia it is a serious challenge,¹⁴⁶ in Brazil it is only marginally under control,¹⁴⁷ in Liberia it funded the bloody regime of Charles Taylor,¹⁴⁸ and the last native forests of Borneo, home to the red Orangutan, the closest relative to homo sapiens in existence, are expected to disappear within the next ten years.¹⁴⁹ Brave voices emerge. The Brazilian ecologist Chico Mendes spoke out against illegal logging in the Amazon and was assassinated in return.¹⁵⁰ The Liberian Silas Kpanan’ Ayuning Siakor, recently honored for opposing the rape of West African forests at considerable risk to his life and family, explained, “our struggle for the environment is not about trees. It is a campaign for social justice and respect for human rights.”¹⁵¹ He sounds like Antonio Oposa.

Meanwhile, the Minors Oposa opinion continues to echo through the Philippines, rarely as controlling law but always in support of environmentally protective decisions. The case has been found cited in eight reported opinions,¹⁵² each with favor, usually on the procedural question of standing to sue which, as a practical matter, has not been a serious obstacle to Filipino environmental plaintiffs.¹⁵³ As some have pointed out, given a liberal view on standing the admission of future generations as plaintiffs puts no additional bodies into the courtroom.¹⁵⁴ Again, however, we can miss the forest for the trees. The recognition of future generations as stakeholders casts issues in an entirely new light. It challenges a host of assumptions concerning national wealth, the value of future interests, and whether sustainable development is a nice idea or a legal command.¹⁵⁵ Which opens a real Pandora’s Box.

Justice Davide’s opinion found such a command in Section 16 of the Constitution, asserting the entitlement of the people “to a balanced and healthful ecology.”¹⁵⁶ It was this assertion that prompted the lone concurring justice to write separately, questioning whether language that vague and aspirational could give rise to legal remedies.¹⁵⁷ Indeed, Minors Oposa was distinguished in a subsequent opinion finding, under very different and less compelling circumstances, that Article 16, in that

case, accorded no enforceable rights.¹⁵⁸ On another occasion, however, the court went on to cite Minors Oposa in an opinion upholding the seriously questionable authority of local governments to enact environmental laws.¹⁵⁹ The citation was not necessary to the ruling; it was included, nonetheless, to emphasize the country's commitment to environmental protection which, in turn, supported an interpretation of the Constitution permitting local environmental controls.¹⁶⁰ This is momentum speaking.

Perhaps the most noted affirmation of Minors Oposa by Philippine courts to date is a recent pollution control case pitting a group called Concerned Residents of Manila Bay against a dozen government and private entities, each of which could legitimately contend that the problem was really caused by somebody else.¹⁶¹ The complaint was bold and sweeping, Oposa-like in the grossness of its facts (the most polluted water body in the country), its public visibility (on the doorstep of the Capitol), the array of its defendants (which included malfunctioning sewage treatment plants, port authorities, agriculture and fishery agencies, several private septic companies and industrial dischargers), and the boldness of the relief requested.¹⁶² It wanted the court to do nothing less than direct the defendants to clean up Manila Bay. Few courts would rise to such bait. This one did, stating:

“The modern trend is to invoke the judiciary in the protection and preservation of the environment. The role of courts at present is to act as guardians of alive and future generations. They have trustee duties towards nature.”¹⁶³

Citing, inter alia, Minors Oposa.¹⁶⁴ The court then proceeded to issue a series of orders, one per defendant, outlining its cleanup responsibilities, be they to install a sewage treatment facility, to treat ship discharges, or to provide a sanitary landfill.¹⁶⁵ They sound as if they were written by the plaintiffs' attorney. The plaintiffs' attorney was Antonio Oposa.¹⁶⁶

At the end of the day, Minors Oposa is perhaps most important precisely because of the diffuse and aspirational nature of its ruling. The language is biblical. It sets out a goal as necessary in our time as the long-elusive concepts of justice and peace. Like a prophet, it states a thesis, and then leaves it to others to figure out how. Jurists and scholars wrestle with it.¹⁶⁷ Its language begins to appear in statutes, and treaties, and then the popular press.¹⁶⁸ These kinds of opinions, in any jurisdiction, reverberate for a very long time. The US Supreme Court's opinion in *TVA v. Hill* was about much more than an endangered species law; it was about recognizing other life on earth.¹⁶⁹ The appellate opinion in *Calvert Cliffs Coordinating Committee v. AEC*, the most cited case in American environmental law, is entirely dicta for the language quoted; it is best known for the power of its vocabulary and its statement of what should be.¹⁷⁰ These two early cases, and others, sent signals all the way down the judicial chain and laterally to government agencies, corporations, environmental organizations and the general public. We live by those signals. The most important one is: the environment not only matters, it *really* matters.

4. Death after Minors Oposa

“It looks like the threats against me have not been empty.”¹⁷¹

Antonio Oposa, 2006

Oposa the man, not the case, moved from forests to the oceans, which were his first draw to the environment from back in the days when he camped on Bantayan Island and cooked fish he caught from the shore. One of the most productive bodies of water in the world is the Visayan Sea, a triangle of ocean running from the Philippines south to Borneo and Indonesia, so rich in life that a square kilometer of reef contains more species of coral than are found in the entire Caribbean, and over 12,000 species of fish.¹⁷² It was called “the Amazon of the Pacific,” until blast fishing, cyanide fishing and just plain overfishing took out 95 percent of its marine life and 99 percent of its coral.¹⁷³ It was the Philippine forests debacle all over again, only this time under water, off shore and much less visible to the public eye.

Oposa made it *his* debacle, and began in typical fashion with Swift, Painful and Public enforcement raids, one described at the beginning of this article.¹⁷⁴ He persuaded the government to empower local communities to manage the resource, creating a Visayan Sea Squadron of more than 100 local vessels to patrol the reefs, inspect the fishing boats and clamp down on illegal harvests.¹⁷⁵ One of Oposa’s closest colleagues was the spokesman for the Squadron, a local fisher by the name of Elpidio de la Victoria, familiarly known as Jojo.¹⁷⁶ Enforcement actions against people who are willing to use dynamite and cyanide to kill fish make their share of enemies, and both Oposa and Jojo de la Victoria received death threats,¹⁷⁷ which are not uncommon against environmental activists in many parts of the world. Only these threats were more than talk. On April 12, 2006, Elpidio “Jojo” de la Victoria was shot four times in front of his home in San Roque, Talisay City.¹⁷⁸ He died the next day. The triggerman turned out to be a policeman.¹⁷⁹ As of this writing, the people behind the killing have yet to be identified.

Tony Oposa is an optimist. In the Laws of Nature he points out that the Chinese character for ‘crises’ combines the characters for two other words, “danger” and “opportunity.”¹⁸⁰ Immediately following the assassination of his Visayan Sea Squadron colleague he wrote to environmental colleagues around the world.¹⁸¹ He was not afraid, he said, to admit that he was afraid. But, he went on, “[w]e can turn this crisis into an opportunity not only for us that work together but more important, for the tide to turn in the Philippine marine conservation movement.”^{181A} As it had for the forests.

Meanwhile, the action for which he is best known, Minors Oposa, hangs out there on the legal horizon like a distant star. Like a dare. Whether human beings can attain the norm of living with the “rhythm and harmony of nature” that the Philippine Constitution prescribes and its Supreme Court relied on is one of the unanswerable

questions of our time, but for the moment it seems way out of reach. And yet, there is this beacon. It is terribly attractive. Everything else is meanwhile, and in the trying.

III. THE RUSSIAN FOREST CASES

On a cold April day in 1997, in a narrow corridor of a gray building on one of the grayest streets in Moscow, a remarkable pageant unfolds, new to the people who have come to participate, new to the media who are out in force, and new to the Supreme Court of Russia, where it is taking place.¹⁸² Many of the onlookers are from the Moscow oblast. Others have traveled from as far away as Khabarovsk in the Far East. They are filing their lawsuit. Inside the building, Vera Mischenko, the head of a small environmental organization called Ecojuris, and Tamara Zlotnikova, Chair of the Environment Committee of the Russian Parliament, push their complaint through a window where it is duly stamped and received by functionaries who are clearly uncomfortable with this kind of attention. Television cameras whirr. Journalists take photos. Mischenko and Zlotnikova make statements. Outside, it is barely twenty degrees Fahrenheit and the crowd is laughing and cheering. The lawsuit accuses the Russian Forest Ministry of giving away the public's most cherished parks to private developers. The practice is not new. They have complained before, about this and other government actions, but with no definitive result. This case, however, will go all the way, and make Russian legal history.

1. The Forests

“They built with pine and oak, they heated with birch and aspen, they lighted their cabins with birch splinters, they shod themselves with blast, and made household tools of linden. For centuries in the north, as in earlier times in the south, the forest fed the economy with the pelts of fur-bearing animals and the honey of forest bees. The forest served as a dependable refuge from external enemies who burdened the Russian people with sorrow and chains.”

V.O. Klyuchevsky, historian, 1987¹⁸³

“It is imperative to decisively expose opportunistic, kulak-capitalist, damaging theories and practices that stem from the ‘principle of sustainability’ in forest use, which until recently were ensconced in forest management and science. The main principle of forest exploitation must be concentrated clearcutting.”

Z. Zh. Lobov, People's Commissar for Forest Industry, 1932¹⁸⁴

The Russian forests are as enormous as a dream. Setting aside the oceans – some oceans, not all – they are the largest thing on earth, stretching across twelve time zones with a monotony that can numb the mind and a seeming endlessness that invites the axe, the bulldozer and the plough.¹⁸⁵ It is, at last, the inexhaustible natural resource. In one sense, then, it is a wonder that the Russians have managed to destroy so much of it. It is also a wonder, however, that the Russians have been able

to save so much of it. Russia is full of such contradictions,¹⁸⁶ never certain whether its compass pointed east or west, whether it would mark the years by the Gregorian or Julian calendar, whether it would adopt democracy, whether it would conquer or retreat from the world.¹⁸⁷ And what it would do with its greatest natural asset, nearly one-quarter of the forests of the entire planet.¹⁸⁸ The answer is: several contradictory things.

The tap root that forests provide for all of Russian culture is hard to appreciate in a country like America that is still so young it has no tap roots and has buzzed through its natural resources so quickly that it exhibits no particular reverence for any beyond a few set pieces, and works of its own creation. Months of the old Rus calendar were named by forest practices (January was called Cutting Time, and March was named for the burning season, reducing birch trees to ashes for the fields).¹⁸⁹ The Russians distinguished between Black forests of deciduous trees (black for their skeletal silhouettes against the snow), and Red forests of spruce and cedar, red in the old sense of “beautiful”, as in Red Square. They had distinct words for forest types -- pine bogs, spruce bogs, dry trees covered by lichen -- with as many nuances as the northern Inuit vocabulary for ice and snow. They had conflicting emotions as well. As might be expected in a story of survival on cold and unforgiving terrain, Russian folklore painted the deep woods in dark colors.¹⁹⁰ The spirits that haunted these woods were not of the friendly sort, yet, these same woods supplied virtually everything needed for survival, including survival of the human spirit. With the adoption of Christianity, the dedication of certain forests for protection, as reserves, was accompanied by great ceremony with “a procession of icons, holy banners and prayers”.¹⁹¹ The groves were sacred. The people took an oath not to enter them, nor to cut their trees, nor even to hunt there. The idea of protected forest areas dates back a very long way.

In the mid 1600’s, the state took over. Tsar Aleksei Mikhailovich designated additional reserves for hunting and falconry, and others along the border for national defense.¹⁹² His son, Peter the Great, brought in professional foresters, and added yet more reserves for the protection of oak and other timber needed to build and maintain the Russian fleet. “I know you think that I will not be alive to see these oaks mature”, Peter said to a skeptic. “It is true. But you are a fool. I do it so that future generations will build ships from these trees. I do not labor for myself, but for the future of the country”.¹⁹³ He was serious. Illegal cutting brought death.

With Peter’s death, however, came the first of several policy reversals, and forest management gave way to a century of privatization and “merciless logging”.¹⁹⁴ A state decree gave private forest owners free rein and the choice, high-end, shipbuilding forests in particular, although historically recognized as preserves, were decimated. By the turn of the century, about ten percent of the Russian forests were gone. Finally, in 1802, appalled by the damage, a new forest charter was adopted that -- nearly a century before Gifford Pinchot in the United States and two centuries before the Rio Convention -- called for preserving the “future abundance” of the forests by a “precise relationship between harvesting and reforestation”.¹⁹⁵ Sustained yield.

By the end of the 1800's, the Russian Forest Code spelled out forest protections, including prohibitions on conversion to other uses, and called for the preservation of "conservation forests" in their natural state.¹⁹⁶ These reserves included woods along coasts and rivers, mountain slopes, transportation corridors, agricultural shelterbelts and parks in populated areas where they were called "the lungs of the city". Then came a second, sweeping policy reversal, the Russian Revolution, and a new schizophrenia.

Initially, the revolution brought chaos. The peasant's appetite for forest materials could not be contained and, with the Tsar and his foresters deposed, the woods were up for grabs. The Bolsheviks, committed to the egalitarian idea of "localism", transferred all private and state forests to the control of newly created land committees, at which point there was no order at all. Finally, reversing field, Vladimir Lenin signed a decree abolishing all private forest property and calling for professional management and "planned resource renewal" of the state domain. Soon, however, timber production was put on a quota system that depended on even-age clearcutting, to "serve the goal of building socialism". An historian writes:

"The forest industry, as one branch of the state economy, had to be in complete compliance with the goals of state economic policy. Therefore, any breach of this policy or attempt to preserve the old forms of management was viewed as bourgeois and reactionary".¹⁹⁷

To the Communist mind, resource exploitation and ruin were the hallmarks of rampant capitalism, the enemy of the people. State planning was the answer. And for reasons familiar to any student of quota-based forest planning in the United States,¹⁹⁸ it became output driven and unsustainable. Torn between competing management philosophies, it also descended into a musical chairs-like instability, with reorganizations almost too frequent to follow. In the previous century forest management had been re-ordered four times; between 1917 and 1992 the forest agencies would be shuffled twenty times, and three times they were "liquidated" altogether.¹⁹⁹ It was chaos.

Save for one overriding principle that was in part pragmatic, part historical and part rooted deeply in the Russian psyche: the preservation of special forest reserves.

2. The Special Forests

"The most protected forests are the first group forests, for example, near the cities or watershed sanitary zones, or for their uniqueness. Of course, the first victim and target for cutting are the forests near the cities... The land was given for non-forestry purposes - markets, city dumps, parking lots, cemeteries etc. Of course the forest was clear cut there and sold off. In less than 2 years of such illegal practice the square equal to the square of Malta was logged."

Socio-Ecological Union Newsletter, February
1999²⁰⁰

The story goes like this. In the winter of 1919, a Valley Forge moment for the Russian Revolution with the White Army on the attack and pressing at the gates of Moscow, the Bolshevik loyalists were freezing to death with scant fuel and scant shelter in one of the coldest seasons on record.²⁰¹ Wood was at a premium, and the city's remaining stock was in the trees of a local park. The pressure to cut them down was enormous. It would save lives. Lenin denied the request. The park was heritage of the city and the Russian people, he said. It was part of what the Reds were fighting for. The trees remained. They and their offspring are still called, today, Lenin's Trees.

Whatever his motives, Lenin's remarkable decision -- if true, and even if not true, as myth -- reflects a lineage of Russian history dating back to the sacred groves, their consecration by the early Christian church, their expansion under the Tsars, and the formally-designated "conservation forests" of the pre-revolutionary regime. What may be even more remarkable is the survival, indeed the entrenchment, of the idea of preserving special forests during the long years of aggressive, production-oriented communist governance. In 1936 a special category of water conservation zone forests was created, followed in 1943 with an official categorization of Russian forests into three groups, by economic and ecological value.²⁰² Group Three, by far the largest in volume, was dedicated to the production of timber. Group Two was a smaller, intermediate category that permitted timber harvests under more strict restraints. Group One forests, however, were off limits. They were dedicated to the preservation of other forest functions: water supply, water purification, flood control, clean air, biological reserves, scientific study, public recreation, and an indefinable, know-it-when-you-see-it sense of aesthetics that is rarely stated, and always present, wherever trees are at issue. Here, there would be little intrusion, and no timber cutting. The more restrictive Group One forests (e.g. biological study preserves) had, at that time, no counterpart for protective management in the world.²⁰³

We need to pause, here, for an historical pulse-check. The year 1943 in Russia was the nightmare time of World War II, one of the most wasting wars in human history. In less than four years the country would lose 27 million people, more than 7 million a year.²⁰⁴ That same year saw the desperate and prolonged battles of Stalingrad and Kursk that would determine the eastern front and, at the very least, the duration if not the outcome of the entire war.²⁰⁵ Yet, extraordinarily, the Soviet government attended its forests, including the heightened protection of Group One. Whatever else died with the collapse of the communist regime, decades later, the notion of protecting these forest areas would survive.

In 1991, the Soviet Union dissolved and the nation of Russia emerged with 50 percent of the population of the former Soviet Union, 75 percent of its land mass and 94 percent of its forest cover.²⁰⁶ The forests were Russia's game. They were also fair game for domestic and foreign timber companies that swarmed in, gold-rush style, to

convert them into cash.²⁰⁷ The Russian Duma reacted quickly. In 1992 all forest management was placed, once again, in the hands of a forest ministry (no longer the Ministry of Forest Industry), reporting directly to the Council of Ministers.²⁰⁸ The following year the Supreme Council adopted forest legislation that reinstated the principle of sustainability,²⁰⁹ followed in 1997 with a new Forest Code with all the buzzwords of modern forestry management: sustainable use, conservation, protection, restoration, ecological services and biological diversity.²¹⁰ More particularly it re-codified the three forest categories, defining Group One expansively to include woods whose “basic purpose is to perform water protective, special protective, sanitary-hygienic, health-building and other functions”, and all previously designated natural areas.²¹¹ Among the listed types were “green zone forests around towns and settlements and economic facilities”, nature preserves and parks.²¹²

Inevitably, however, these Group One’s, and particularly the greenbelts, were to come under a new kind of pressure, reminiscent of Lenin’s Trees. As towns and cities expanded, the temptation to use these woods for waste dumps, highway corridors, condominium developments and weekend dachas was terribly strong. There was no mechanism for public protest, the bureaucracy in Moscow was infinite distances away, and the path of least resistance was to approve. The government began giving Group One’s away.

3. The Building Storm

“In the early 1990s, courts did not take environmental cases for examination at all. Judges did not know the environmental legislation. We brought them copies of appropriate normative acts...We were the first who acquainted judges and other officials with the Constitutional right to a favorable environment and unlimited guarantee of protecting this right in court. What is more, they learned that a European Human Rights Court existed, and we could appeal to it. It was a revelation for them. “

Vera Mischenko, President of Ecojuris, 2001²¹³

Modern notions of environmental protection came late to Russia, but the idea of nature protection was always there. Russian authors from Pushkin to Pasternak²¹⁴ describe a particular reverence towards the trees and the land, and in the early 1900’s there were even voices protesting the consequences of industrialization, before the iron curtain slammed down.²¹⁵ Russian scientists, led by professional foresters, were in the avant-garde of conservation management.²¹⁶ Russia’s reliance of science was accentuated by the Soviet regime, torn between its commitments to rational management and to the exigencies of the latest five year economic plan.²¹⁷ Within this struggle, the State Academy of Sciences exercised a quasi-independent right of opinion that advanced environmental policy from the inside and, at times, exerted significant influence, including the protection of the world’s deepest fresh-water body, Lake Baikal.²¹⁸ In the mindset of rational management, the field of law was considered a science like any other, and Russian lawyers were and continue to be trained in that

context, as social engineers. Logically, then, the Academy of Sciences supported an Institute of State and Law,²¹⁹ and in retrospect it was inevitable that the Institute would serve as an entry point for emerging concepts of environmental protection, none more radical than the idea of public interest environmental law.

Environmental organizations are not new to Russia. But they have been on a very short leash. The Soviet regime promoted All Nature Societies at the national and state levels, with duties closely allied to non-threatening, love-of-the-land missions such as anti-poaching campaigns, tree planting and erosion control.²²⁰ Over time, these societies evolved to serve a communist style, eyes-and-ears function within farm collectives and industrial plants as well, reporting on pollution compliance, sometimes with results, but if there were no results the case was closed.²²¹ The idea that the case could go farther was shocking, indeed laughable. By way of illustration, in 1977 the author served on an environmental exchange between the US and the Soviet Union featuring endless rounds of toasts and stories. One story from the American side was the recent and highly-controversial US Supreme Court opinion blocking construction of the Tellico Dam, on behalf of a group of citizens, to protect a tiny and hitherto unknown species of fish.²²² The story never failed to astonish. How could a fish stop a dam? And yet more unbelievable, how could a citizen stop the government?

Then, in 1985, came Michael Gorbachev, glasnost, and the world turned upside down.²²³ The next year brought the Chernobyl nuclear catastrophe, steady revelations of a cover-up, and then news of more pollution disasters, and even a government scheme to run the rivers of Siberia backwards.²²⁴ Anti-nuclear protests began. Government credibility plummeted. Two years later the Communist Party and the Council of Ministers, playing catch-up, announced a resolution "On the Perestroika of Environmental Protection Activities"²²⁵ and convened a first ever public hearings on environmental impact review.²²⁶ Too little, too late. In 1991 the whole house of cards collapsed, and the stage was set for a revolution in environmental law. Out popped a remarkable series of women lawyers, one of whom was a Ph.d. graduate of the Academy of Sciences Institute of State and Law, Vera Mischenko.

Mischenko was no accident. She had studied natural resources and environmental law at Moscow University, and written her graduate thesis on the Effectiveness of Civil Remedies in Environmental Law.²²⁷ In the late 1980's, while still a member of the Institute, she began investigating the construction of a thermal power station in Moscow that was proceeding without environmental clearances.²²⁸ Wherever she looked she saw the same pattern. In response she formed the first, post-Glasnost environmental organization in Russia, Ecojuris, with a frankly law reform agenda. In 1992, as the new Russian world was taking shape, she was given a three-month fellowship to the United States to work with the Pacific Environment and Resources Center and the Environmental Law Institute Worldwide, both organizations dedicated to the promotion of environmental advocacy abroad. She returned home with firm notions on public interest law practice, foundation funding and litigation strategies.

Back in Moscow, she was on *terreno nuevo*. Unlike the arrival of Columbus in the new world, there was *nobody* living here. Russian courts had no experience in gainsaying the actions of the Russian government and absolutely no knowledge of environmental law. On the other hand, she had at her disposal a set of recently enacted laws that looked powerful enough to compel compliance by sovereign agencies unaccustomed to questions and long accustomed to bulldozing their own way. The laws came out like hotcakes. In 1992, a framework law On the Protection of the Natural Environment declared, among other things, the right of each citizen to “a favorable environment” and “its protection against negative effects caused by economic and other activities”.²²⁹ The following year, the new Constitution guaranteed the right to a healthy environment and added the rights to organize, assemble, protest, and appeal to the courts and yet beyond, to international tribunals for violation of individual rights.²³⁰ For challenges to government decrees, the new Civil Code provided direct access to the Russian Supreme Court.²³¹ A new forest policy appeared, followed by the 1997 Forest Code that reiterated Group One protections and provided that these reserves would not be transferred from public protection without approval of national authorities and on the basis of a favorable environmental assessment and a showing of need.²³² The Forest Code was, in turn, reinforced by a 1995 Law on Environmental Expertise that stated a *presumption* of environmental harm from “any new economic or other activity”,²³³ and required an independent, expert review and opinion (“expertise”) of these impacts for, mandatorily, “the transfer of forest areas into the category of non-forest ones”.²³⁴ The problem was, the government wasn’t doing it.

Vera Mischenko’s first case did not target forest transfers but, rather, a high-priority, high-speed railway project between St Petersburg and Moscow that, unnecessarily, but as a route of least resistance, ran through the Valdai zapovednik, an area protected for biological and scientific interest, and other Group One reserves.²³⁵ As with the thermal power station and other projects she had examined, there was no environmental expertise. The Supreme Court may have had direct jurisdiction over the case, but it had no appetite for the issues and it came up with a series of procedural reasons to avoid a hearing on the merits.²³⁶ Meanwhile, however, Ecojuris launched a media blitz eliciting letters to state agencies, legislators and the Attorney General. More than three thousand people supported the campaign, which was reported on every TV channel. At the same time, project moneys were running out, some said into the pockets of government officials. In the end, the route was cancelled and a first shot was fired across the bow of Russian government decrees.

The forest transfers, however, were a tougher nut. They were extremely popular locally, where local officials and developers held sway. Strong odors of payoff and corruption ran all the way up the chain of command.²³⁷ The Forest Ministry, for its part, enjoyed a reputation of professionalism that, while no match for the politics of forest transfers, insulated it from public criticism. The practice of giving away Group One reserves to local interests, furthermore, dated back to the Soviet era²³⁸ and had acquired the mindless legitimacy that comes with custom and habit. Local interests petitioned the states, who routinely forwarded them to the national government, which

assembled them into bunches and periodically approved them by special decree.²³⁹ This was the way it had always been done. Only now, in the new Russia, there was another factor in the equation: the rest of the Russian people who didn't particularly favor losing their parks, mushroom picking grounds, picnic areas, green belts, and the lungs of their cities.

The first rumblings of opposition were local. In 1994, the mayor of a small town on the outskirts of Moscow approved the construction of a condominium in a Group One forest.²⁴⁰ Local citizens, aided by Ecojuris, formed an organization called Our Town and started barraging the mayor with letters, followed by a complaint in the local court. The mayor backed off and canceled his order. The trees remained standing. The following year the government of Leningrad adopted an ordinance cutting a local biological reserve to less than half its size, releasing over 500 hectares for development.²⁴¹ An environmental organization called Green Party challenged the order in a Leningrad court, for lack of environmental expertise, and won. The Supreme Court affirmed. The problem was that approvals like this were issuing en masse, and opposing them on a case-by-case basis would never stop the train.

Looking into the question, Mischenko found that, in the two years following the 1995 Law on Environmental Expertise, the Russian government had transferred away some 30,000 hectares (approximately 75,000 acres) of Group One reserves located in 72 states of Russia, across the top of the world.²⁴² In the Urals, 1,500 hectares were ceded for the construction of a waste plant, industrial buildings and a commercial market. In the Khanty-Mansiyisk region more that 600 hectares went to private farms, gas stations, roads and drilling rigs. Additional lands were transferred for public housing, private recreational homes, parking garages and whatever else would generate revenue and political favor, by percentages: 3 % in the Komi Republic, 5.9 % in the the Yakutia Republic, 3.5 % the region of Irkutsk, 17% for the Kirov region, 7.1 % Krasnoyarsk, 2.2 % Leningrad, 9.85 % Magadan, 1.9 % Moscow, 6 % Severdlovsk, 5.3 % the Yamalo-Nenetsk autonomous region ... it was pandemic, disposal by a thousand blows. None of the transfers made a case of need. None were accompanied by the required environmental expertise.

Which brought Vera Mischenko, Tamara Zlotnikova, Ecojuris, several other environmental organizations, and the newspapers, the television cameras and a smattering of citizens from across the country to the small window of the Supreme Court building on Povarskaya Street on a cold day in April, to file suit and launch their rocket that, this time, would reach the moon.

4. Zlotnikova T.V. et. al. v Russian Federation

“The states send requests on transfer of the forest lands to non-forest lands to the Government, and the Government in turn gives the green light. ‘If in the forests of the first group people make a cemetery, should I require exhumation? Because of that, we allow transfers.’”

Unnamed Forestry officials, during trial²⁴³

“In none of the challenged orders did the [Government] justify ‘exclusive’ circumstances, or the necessity of transferring such forestlands...[the RF] also did not challenge that a preliminary state ecological examination for potential negative impact of “first group” forest transfer was not conducted...The Court confirms that the law provides that the Government of the Russian Federation has no right to disregard the requirement that the transfer of ‘first group’ forests occur only in unusual cases.”

Verkh. Sud RF Ruling of 17 Feb. 1998²⁴⁴

There were two forest cases. They were filed in the name of Tamara Zlotnikova who was also a member of the Russian Academy of Sciences and, as perhaps the most active environmental leader of the State Duma, had introduced the Law on Environmental Expertise and had nearly ten years of debate and persuasion under her belt.²⁴⁵ Zlotnikova became the public face of the forest campaign. She led the proceedings in more than name; passionate and articulate, she would speak first for the plaintiffs in each proceeding.²⁴⁶ As Vera Mischenko later said, people thought, this was not just an environmental group against the government, this was a Deputy of the Duma against the government.²⁴⁷ Something *must* be wrong.

Zlotnikova I, filed in April 1997, challenged twelve, bundled decrees issued by Prime Minister Chernomydrin that effectively opened 18,000 acres of Group One forest lands to development ranging from cottages, cemeteries, landfills, gas stations and the familiar range of intrusions.²⁴⁸ The original plaintiffs also included the All Russian Nature Protection Society (a signal of its evolution since the old tree-planting days), ecology groups from Tomsk and Bashkortostan, and even the heads of several local forestry departments, forest professionals finding their voices.²⁴⁹ As the proceedings went on, they would be joined by a wide array of public and private organizations, including the Moscow Water Department which feared tree cutting and erosion along its aqueducts and reservoirs.²⁵⁰ Like a civil rights march, the case started with a small, if diverse, band. It ended with an army.

The grounds of the complaint were relatively simple. While the Forest Code allowed the transfer of Group One forests for other uses, these approvals required, under both the Forest Code and the Law on Environmental Expertise, environmental clearance and “exclusivity”, akin to a showing of need.²⁵¹ The law seemed clear, but the Supreme Court was at first no more ready for it than it had been for the Group One challenge to the St. Petersburg to Moscow railway. It refused to hear the case on the grounds that the decrees were “normative”, i.e. generalized, and beyond its jurisdiction.²⁵² Zlotnikova argued that, to the contrary, the decrees were local and site-specific with immediate, real-world consequences.²⁵³ Further, to deny plaintiffs this

challenge would deny them access to justice guaranteed by state law and the Constitution.²⁵⁴

None of which argument would have mattered but for the intervention of Supreme Court Deputy Chairwoman Nina Segeeva, a highly-respected member of the bench, who agreed with the plaintiffs and appealed to the Presidium, an appellate body within the Court, to take the case.²⁵⁵ The Court reversed itself. There were no procedural flaws. We would go to the merits.

By late fall, the case was becoming notorious. The first hearing, scheduled for the end of November, had to be postponed with the appearance of 22 new plaintiffs.²⁵⁶ A month later the first session began, relatively quietly. The government, unaccustomed to serious challenge, took the case lightly, with only two attorneys in the courtroom.²⁵⁷ They would end up with fifteen, plus retained private attorneys and a bevy of other experts, but by that time it was late in the day.²⁵⁸ At one point a government attorney turned to Mischenko, Zlotnikova and their female assistants and said, "You women would be better off singing the Song of the Bryansk Forest than trying to present such stupid statements to the court".²⁵⁹ This did not go over very well. The Court informed him that if he repeated such comments he would be removed from the proceedings.²⁶⁰ Neither casual disregard nor belligerence, time-honored government responses, seemed to work. The government would have to staff up. This was a new day.

Meanwhile, Vera Mischenko was mounting a political campaign with weekly press releases in Russian and in English and widely published letters to state agencies and representatives, putting them on the spot, urging that they uphold the law.²⁶¹ A second hearing in early February was postponed, ostensibly for the absence of a plaintiff, but in reality because the documents, statements and affidavits pouring into the Court were overwhelming.²⁶² Somewhat belatedly, government officials went on the counter offensive, the commercial forestry newspaper urging the Court not to be swayed by the "green hysteria" surrounding the proceedings.²⁶³ To the end, they really could not believe that their decisions were under question. A contemporary observer reported their "smoldering discontent" -- come on, civilization is being attacked, what environmental rights are you talking about? You say it is illegal? This obstacle can be overcome."²⁶⁴

Finally, in late February, the case went to trial. Zlotnikova and attorneys from Ecojuris produced experts from the western border to the far side of Siberia testifying to the high value of the Group One forests in their areas and the harm that was being caused by their transfer.²⁶⁵ The government resisted the evidence of harm and then fell back on an argument familiar to any student of American environmental law: all that the federal government was doing was issuing permits, which²⁶⁶ were only pieces of paper. It was up to the states and local groups to decide what to do with them. The lawsuit was focused on the wrong defendants, and in any event was premature. To which the plaintiffs responded that the harm, indeed, was ongoing. Questioned by the Court, a forestry official admitted that over 80 percent of the reclassified lands in the

Cheyablinsk region of the Urals had already been developed.²⁶⁷ To the government, in cases like these, plaintiffs are always too early until they are too late.

It was hard, however, to read the Court. By the end of the second day of trial plaintiffs had seen several motions rejected, including the addition of yet more distant plaintiffs from Karelia in the far north and Sakhalin Island near the Bering Strait, and the rejection of several expert witnesses.²⁶⁸ On the third day, they adopted a radical strategy. Russian civil procedure allowed key witnesses, in addition to attorneys, to make closing statements to the court and Zlotnikova et al made full use of the opportunity.²⁶⁹ A chain of recognized experts arose to condemn the conduct of the proceedings and to insist on their statutory and constitutional rights. The moment was made all the more dramatic by the declaration of a young woman prosecutor from the Office of the Attorney General, who began her remarks by saying, "I have just spoken as a prosecutor, but I would now like to say as a citizen ...", and proceeded to ravage the government's case.²⁷⁰ The decrees were illegal. There was real and immediate harm.

The Court retired to consider its verdict. Outside the building, a picket line of environmentalists had been demonstrating for three days.²⁷¹ Inside, they packed the courtroom to the point that there was no room to stand. Two hours later, the Court returned and announced its ruling. It found for the plaintiffs on all counts: environmental harm,²⁷² no environmental expertise,²⁷³ and no showing of need.²⁷⁴ All 12 decrees were voided.²⁷⁵ The room burst into cheers. The people stayed on, long afterwards, applauding.²⁷⁶

Their joy would be short-lived. Vera Mischenko had done her homework in researching the decrees, but her challenge came after the three-month window for appealing government decisions had closed. And so, again on appeal to the Praesidium, the case was reversed and remanded to determine which, if any, of the appeals had been filed in time.²⁷⁷ Back to trial, there was little more testimony; the only question was decree dates and deadlines. Challenges to two decrees were found timely. The other ten had tolled, and escaped the net.²⁷⁸ Zlotnikova and her colleagues filed their own appeal this time, and persuaded the Court that two more of their challenges had been timely.²⁷⁹ At the end of the day, four decrees were annulled while another eight wriggled free.

While the first appeal was pending, Zlotnikova filed a new petition challenging thirteen additional decrees, some of them several years old but at least one other issued, rather audaciously, following the Court's first opinion. The petition also sought a private ruling, something like a declaratory judgment, that the process of such transfers, without prior environmental expertise, was unlawful.^{279A} Testing new provisions of the Constitution and the Civil Code, the complaint was filed on behalf of "all current and future generations of Russian citizens".²⁸⁰ It was an open invitation to the Russian people who, having heard about the case in the media, sent letters and faxes by the thousands, from all quarters, to Ecojuris²⁸¹ authorizing it to represent them, and their children, and their children's children. Shades of Minors Oposa.²⁸²

When the dust sand settled, the Court found twelve of the thirteen challenges untimely, but, in an opinion addressed directly to then-Prime Minister Eugene Primakov, it reinforced its earlier opinion and declared the entire Group One forest transfer process invalid.²⁸³ It further, expanded the basis for its holding: plaintiffs constitutional rights to a favorable environment had been abrogated,²⁸⁴ as well as the government's duty to consult with the public before acting.²⁸⁵ A strong nudge towards a wider notion of democracy. In a sense, it was the last and missing piece of glasnost. Whether it will endure, as with so much of the story of Russia, remains to be seen.

5. Managed Democracy

“Putin is not likely to engage in open political repression, except perhaps, against the environmental movement, which is capable of arousing public opinion – over pollution and health hazards, for example. That movement is also capable of interfering with large-scale financial deals in which the administration or its allies have an interest”.

Sergei Kovalev, *New York Review*, 2001²⁸⁶

“As soon as we start to do something, one line of attack against us is always environmental problems... Ecological expertise shouldn't obstruct the development of the country or the economy”.

Vladimir Putin, 2005²⁸⁷

Is it possible to have environmental protection without the free-for-all of western democracy? Russia may tell us. China may tell us. But to date, the answer is otherwise. Western notions of environmental protection depend on citizen participation, even opposition, even demonstrations, referendums and lawsuits, to defend past gains and advance the ball. To be sure, environmental participation advances civil society²⁸⁸ but it also presumes the opportunity of civil society. It is no accident that the notions of environmental organizations and public interest law came to flower in Russia in the 1990's during perestroika and Glasnost. In a few, heady years under Mikhail Gorbachev and Boris Yeltsin, with a fecundity rivaling that in the United States in the early 1970's, Russia passed a wide variety of highly protective environmental legislation,²⁸⁹ established an independent Ministry of Environment,²⁹⁰ and sponsored a first-ever Federal Civic Forum to promote the growth of citizen voices and organizations.²⁹¹ Then the wheels came off.

The Gorbachev years were seismically disturbing to the Russian people. Seventy years worth of icons broke and fell. The Yeltsin years that followed turned to chaos and the government all but dissolved.²⁹² Not before, however, in a free-market frenzy, hundreds of former functionaries and their allies made killings by appropriating everything of value the government owned, including its natural resources.²⁹³ A new

mafia took charge of the day-by-day.²⁹⁴ Private “oligarchs”, overnight multi-millionaires, made public policy.²⁹⁵ And then these wheels came off too.

Ten years after the Forest Cases, Russia is once again emerging from one of those tectonic shifts familiar to students of its history and displaying the same tensions, extremes and rearrangements of power, only this time compacted within weeks and months instead of years and decades.²⁹⁶ The most visible new phenomena are central authority and Vladimir Putin. The federal government has taken over. The buzzwords are “vertical governance”²⁹⁷ and “managed democracy”.²⁹⁸ It will be challenge to western-style environmental protection, because this style of protection is in turn such a challenge to government, wherever it is found. It is one thing to run for election every few years. It is another to have someone, persistently, questioning your deals. And then taking you to court.

The government crackdown in Russia has included a none-too-concealed mugging of its environmental critics, but the offensive is far more sweeping. Within a few brief years Putin had taken over television, eliminated the independent media, intimidated journalists (several have been “mysteriously” killed, including even an American reporter), replaced elected members of parliament with appointed officials, marginalized opposing political parties, nationalized the oil industry and gone after independent businessmen with a ferocity that shocked even sympathetic foreign observers.²⁹⁹ It did not particularly shock the Russians, however, and they are the votes that count. In 2004 Putin was re-elected with 70 percent of the vote and has since seen approval ratings as high as 80 percent.³⁰⁰ This is before we come to the environment.

Putin’s views here are more complex. On the one hand, he professes allegiance to the environment and the civil rights necessary to protect it.³⁰¹ On select occasions, backed into a public relations corner, he has intervened to override his line agencies and require significant mitigating measures.³⁰² In an uncanny parallel to the current Administration of the United States, however, he also sees environmental concerns as a clear and present danger to the nation’s development,³⁰³ with an additional twist. In Putin’s view, non governmental organizations provide a lever for foreign interests to manipulate Russian society and Russian decisions, often for simple pecuniary gain. “We began building a part near Finland”, he has explained, “and our partners – I know this for a fact – invested money into the activity of environmental organizations with the only aim of hindering the development of this project, because it creates competition for them”.³⁰⁴ The motives of foreign infiltrators may, however, be even worse. “Sadly”, the President declared in 1999, “foreign secret services use not only diplomatic cover, but also all sorts of ecological organizations.”³⁰⁵

Motivated by these concerns, as well as by officialdom’s age-old resentment at being criticized, Putin has moved aggressively to curb environmental law and environmental civil society. In the year 2000 he abolished the Environment Ministry (The State Committee for Environmental Protection).³⁰⁶ The Law of Environmental Expertise itself has been weakened (the new version called by one observer, “terrible,

but better than nothing”).³⁰⁷ Putin also abolished, yet again, the historic and professional Ministry of Forestry.³⁰⁸ The environmental policy and forestry duties were transferred to the Ministry of Natural Resources which is committed by statute, politics and every economic pressure to resource development; to Vera Miskehnko it was like “letting the cat guard the cream”.³⁰⁹ The Ministry’s environmental monitoring was at the same time decimated, and pollution fees imposed on industry by the volume of their discharges were allowed to expire.³¹⁰ Following a referendum signed by two and a half million Russians protesting the elimination of the environmental and forestry agencies, Putin had the law changed to prohibit environmental and other nongovernmental organizations from launching such referenda in the future.³¹¹ The subsequent fate of the Forest Code has, itself, been a Perils of Pauline saga with monthly twists and reversals of fortune, and no end in sight.³¹² A senior forestry expert of the Russian Academy of Sciences, long the unofficial arbiter of such issues, complained that:

“The scientific organizations were not invited to participate in drafting this code ... No information was sent to us here, let alone the code itself ... The information about the latest versions of this document reached us third hand... At first we tried to be active, to analyze [the drafts], then after about the fifteenth version, we threw up our hands”.³¹³

At last reading, the Code facilitated the transfer of Group One forests in urban areas for “parking lots, oil wells, and walled estates for the rich and well-connected.”³¹⁴ Move over, foresters; this is a new political day. Also a very old one.

Government actions against environmentalists themselves have also been extreme. Small environmental groups in the hinterlands have been raided, audited, intimidated and seen their operating licenses revoked, coincident with their voiced opposition to government proposals.³¹⁵ The Moscow office of Greenpeace was ransacked on the pretense that a cubicle had been built without a permit.³¹⁶ When a former Russian navy captain expressed reservations about contamination leaking from discarded nuclear submarines, he was jailed and criminally charged.³¹⁷ The same happened with a journalist reporting similar stories from Siberia.³¹⁸ You don’t have to jail too many people for everyone to get the message. Taking a page out of recent environmental politics in the United States, the government and industry have started to fund their own brand of environmental NGO’s with names like “Ecological Forum”,³¹⁹ in an effort to offset the voices coming from the grassroots.³²⁰ Not content with case-by-case warfare, however, in January 2007 Putin signed a highly-controversial bill imposing, depending on your point of view, merely burdensome or “draconian” filing and registration requirements on all non-governmental organizations, including disclosure of their member lists, finances and sources of foreign funding.³²¹ It was “impossible to openly prohibit all independent NGO’s”, said the chairman of the Bellona Environmental Rights Center in St Petersburg. “The Kremlin is building up a mechanism to make them die”.³²²

It is against this backdrop that the fallout of the Forest Cases must be judged. In one sense, the fallout was quite direct. These cases and their hullabaloo, as much as anything else, prompted the crackdown. All the more remarkable, then, the subsequent feistiness and staying power of Vera Mischenko and Ecojuris, which remain the outpost of public interest environmental law in Russia. Lodged in two small offices at the top of a building on Leninsky Prospect, seven trolley stops from downtown Moscow, Ecojuris hides a slender-but-all-star lineup of attorneys with strong credentials in science and law.³²³ They are all women, and, empowered by the precedent of the Forest Cases, they have challenged just about every major state initiative affecting the environment in recent years including oil leasing, nuclear wastes disposal, a trans-Siberian pipeline, the new Forest Code, and the infamous decree abolishing the ministries of forestry and the environment. We will look at three of these initiatives, simply in order to measure how far the ripples have spread, and against what obstacles.

The oil cases came in two waves, both centered on massive development in northern Siberia and Sakhalin Island, home to about 8,000 native Inuit and large numbers of endangered sea mammals, and a primary producer of the nation's commercial seafood.³²⁴ Russia's treatment of this landscape is reminiscent of the United States, circa a century ago. In the words of Victor Danilov-Damilyan who was chairman of the Russian environmental ministry from 1991 until its dissolution, "Business [has] dropped even the appearance that it is obeying the laws of conservation."³²⁵ Which apparently troubles even some of the businessmen involved. As one western oil executive describes, "You go there, and you are surprised, if not horrified, by what you see. It's wells leaking all over the place, and big oil spills in the marshes. So you say, what am I going to do?"³²⁶

What Russia is going to do is to expand the action off-shore. In a pattern that should by now seem familiar, the government signed a deal with a consortium led by Exxon-Mobil that waived discharge regulations for drilling wastes, and bypassed the required environmental expertise altogether.³²⁷ In 1999 Ecojuris appealed to the Supreme Court, which invalidated the approvals and remanded the decision.³²⁸ Five years later, Ecojuris was back in court again challenging a new leasing decision, this time on the adequacy of the environmental review and its compliance with endangered species protection laws.³²⁹ One can sense President Putin's blood pressure rising.

Nuclear development has been a particularly hot issue in Russia, non only because of extremely lax waste disposal practices (basically, they were dumped in the ocean, and when that practice received international condemnation Russia began dumping them across Siberia)³³⁰ but because of the particularly nasty experience with the meltdown at Chernobyl.³³¹ Adding insult to injury, in the late 1990's the Putin Duma repealed its ban on the import of nuclear wastes from other countries, including the United States, opening the way for a multi-billion dollar business.³³² To the government and even to some in its scientific community, it was a marvelous revenue scheme.³³³ To the Russian people, however, it looked like selling out their safety for cash they would never see. Ecojuris and many other groups launched a referendum

repealing both the waste import law and the abolition of the forestry and environmental ministries.³³⁴ They garnered two and a half million signatures, 500,000 more than needed, only to have the government invalidate some 600,000 signatures, and so, the petition itself.³³⁵

Ecojuris took the government to court, challenging the rejection of the referendum. Meanwhile, however, Putin's legislature had changed the law to put Presidential decrees beyond judicial review, except for violations of constitutional rights. which the Supreme Court, stepping back from the Forest Cases, found not implicated here.³³⁶ Undaunted, Vera Mischenko appealed the cases to the European Court of Human Rights. This court, too, however, had no appetite for challenging the Russian bear. It held that Russian decrees that were not subject to citizen appeal did not abridge civil rights and freedoms guaranteed by the Convention on Human Rights.³³⁷ The government won. But it had been embarrassed.

Meanwhile, the Ministry of Natural Resources was promoting, and then approving, a \$ 15 billion pipeline extending 2,600 miles from eastern Siberia to the Pacific coast, with an alignment that came less than 100 meters from Lake Baikal.³³⁸ Environmentalists in the neighboring city of Irkutsk launched a series of "flash mob" actions designed to put media pressure on the decision. Over 300 residents deposited bottles of tainted "Baikal water" on the steps of the administration building. They also tied blue and black balloons to trees in town, representing Baikal before and after the feared oil spill. Sixteen people were arrested in Moscow for protesting the pipeline, but 5,000 people gathered in protest on the streets of Irkutsk, the city's largest demonstration in eighteen years. When a state environmental review panel voted against the Baikal route, the government hand-picked 34 new members and removed several of the opponents. Even as Russia goes, it was getting heavy-handed.

In early 2006, Vera Mischenko and an attorney for a Siberian environmental organization petitioned the Supreme Court for relief.³³⁹ This time, too, the Court stepped aside, but the publicity from the case increased national attention. Under considerable public pressure, in April 2006 President Putin ordered the pipeline stepped back from the Lake, from the proposed 80 meters to 40 kilometers away. Facing difficult terrain at the new distance, the pipeline company then announced a new route some 400 kilometers from Baikal. Putin took credit for the decision.³⁴⁰ But he would later go on to characterize the environmental opposition to the Baikal route as an example of the very extremism that he was seeking to rein in.³⁴¹

Of perhaps equal impact, following the Forest cases Mischenko and Ecojuris have served as a mother ship for environmental activism in Russia, writ large. Ecojuris attorney, Olga Yakovleva, who pulled a laboring oar during the Supreme Court hearings, went on to challenge the adoption of the new Forest Code for violation of, inter alia, the Law on Environmental Expertise, and then went on to start her own organization, JURIX.³⁴² Mischenko, meanwhile, created the Russian Network of Environmental lawyers, a group of volunteers willing to work without pay on environmental cases, within which, without fanfare or apparent rancor, she is

considered a first-among-equals.³⁴³ She has also been a role model for a fledgling group of environmental NGO's that have sprung up across Eastern Europe, taking on the same kinds of issues in the same ways, and willing and able to sue.³⁴⁴

In Mischenko's case, however, the odds of winning within Russia are increasingly long. The Supreme Court found its voice in the Forest Cases, but has since blown hot and cold on the idea of reviewing government decisions. A new curtain of official supervision and limitations has descended on all Russian NGO's, affecting their membership, funding, ability to petition, access to court and the laws that they have to work with once they get there. Asked recently about the Forest Cases, Mischenko said, somewhat wistfully, we could never win them today.³⁴⁵ It is often said that these are hard times for environmental policy in the United States, and that is doubtless true. But, considering Russia as a proxy for the world around us, we have no idea how hard it can really be.

We do know this much. About ten years ago Russia departed from a long tradition of tsarist regimes and the Supreme Soviet to impose a rule of law, environmental law, on the new government. Most governments – whatever they may say about it – do not like rules of law applied to them, and the crackback in Russia has been strong. But the Forest Cases are there, on the books, as visible and indestructible as history, and the precedent they set continues to challenge government environmental policy. Like the proverbial gorilla in the closet, the Forest Cases do not sortie out all that often, but everyone up to and including President Putin is well aware that they are there. Which provides reason for hope.

* Professor of Law, Tulane University. Significant research assistance of Jennifer Hoekstra and Lois Kim, J.D. Tulane Law School '07, Ilya Fedyaev LLM '05, and Patricia Syquia, J.D. '05, is acknowledged with gratitude. This article is the second in a series on environmental cases, around the world, that inaugurated principles of environmental protection, citizen enforcement and judicial review. For the first in this series, see Oliver A. Houck, "O Canada!: The Story of Rafferty, Oldman and the Great Whale," 29 B.C. Int. and Comp. L. Rev. 175 (2005-6). For histories of similar cases in the United States, see Oliver A. Houck, More Unfinished Stories: Lucas, Palila and Palila/Sweet Home, 75 U. Colo. L. Rev. 331 (2004); "Unfinished Stories," 73 U. Col. L. Rev. 867 (2002); "The Water, the Trees and the Land: Three Nearly Forgotten Cases That Changed the American Landscape," 70 Tul. L. Rev. 2279 (1995-6).

¹ Quoted in T.H. Watkins, "Father of the Forests," Am. Heritage, Feb./Mar. 1991 at 91. There is an element of conquest working here as well, evident in pictures from the old lumber camps. The loggers are posed on top of a large stump. In some photos they are having a picnic. In any event, they are celebrating. They brought this giant to the ground.

² Ma. Ceres P. Doyo, "Mother Nature Lays Down the Law," Global Nation INQ7.net, April 30, 2006, available at http://www.inq7net/globalnation/sec_fea/2006/may/04-01.htm; Lea Marie Sumanga Picar, "Antonio A. Oposa", Philippine Supreme Court Accredited Provider of Mandatory Continuing Legal Education, available at <http://www.chanrobleslawnet.com/attyantonioaoposajr.html>; Antonio A. Oposa, Jr., "Environmental Activism and the Fate of Homo Sapiens Sapiens" lecture, 10th Annual Conference on Environmental Law and Policy, Tulane Law School, April 1-2, 2005; Interview with Antonio A. Oposa, Lawyer, in New Orleans, LA. (April 1, 2005), description of the arrest of the logging ship is taken from these sources.

³ Doyo, *supra* note 1; Antonio A. Oposa, Jr., "Using Coordinated Enforcement to Protect Forests from Illegal Logging in the Philippines," 5th International Conference on Environmental Compliance and Enforcement, Nov. 16-20, 1998, at 236-7 [hereinafter "Coordinated Enforcement"].

⁴ Coordinated Enforcement, *supra* note 2, at 237. Philippine criminal procedure provided for "inquest proceedings" in the field; a person caught in the act of an offense could be subjected to an immediate, on-the-spot hearing to determine probable cause, leading to detention. *Id.*

⁵ *Id.*

⁶ Doyo, *supra* note 1.

⁷ *Id.* Coordinated Enforcement, *supra* note 2 at 239.

⁸ Antonio A. Oposa, Jr., The Laws of Nature and Other Stories 177 (2003). [hereinafter "Laws of Nature"] ("To repeat; if enforcement is to be effective it must be swift, painful and public").

⁹ Yvette Lee, "He Means Business," Graphic Magazine, Nation Section, July 12, 2004.

¹⁰ *Id.*

¹¹ Doyo, *supra* note 1.

¹² "4 illegal fisherman named fish wardens," the Philippine Star, July 31, 2006 ("Four fishermen found guilty of dynamite fishing have been appointed as "fish wardens" instead of being meted prison terms," an action supported in a letter to the Supreme Court and the Department of Justice by environmental lawyer Antonio Oposa).

¹³ Antonio A. Oposa, A Legal Arsenal for the Philippine Environment (2003).

¹⁴ Laws of Nature (2003), *supra* n. 7.

¹⁵ Selected by his classmates at Harvard's graduate school of law to give the commencement address, Oposa spoke not on the law, but "On Friendship and Laughter." Doyo, *supra* note 1. Within the Philippines, Oposa has become a breeder reaction for environmental protection, across the board. For the range of his activities See Antonio A. Oposa, Jr. Curriculum Vitae available at http://www.oposa.com/oposa_family.cvaao198.htm. By way of example, in 2004, Oposa spearheaded an effort to create an environmental Ombudsman to prosecute public complaints; in 2005 he filed on behalf of the Philippine Bar's environmental section the first complaint before the Ombudsman against illegal solid waste dumping by the City of Manila. Rox Pena, "Enforcing the Solid waste law", Sun Star, May 13, 2005, available at <http://www.sunstar.com.ph/static/pam/2005/05/13/oped/rox.pe.a.html>.

¹⁶ Doyo, *supra* note 1 ("Here is one lawyer who says he's not in love with the law, not in the way others wax poetic over legal philosophies and the sheer beauty the find therein. 'For me, law is a tool, a

thinking tool to guide human conduct . . . I was not in love with law when I started off”). See also INECE Newsletter, Newsletter 9 “Visayan Sea Squadron Begins Patrols in Philippines, Feb. 2004, available at http://inece.org/newsletter/9/regional_asia.html.

¹⁷ Antonio Oposa, Dedication of “The Laws of Nature” to the Tulane University Law Library, April 2005.

¹⁸ Minors Oposa v. Factoran, 224 SCRA 792 (1993); reprinted in 33 I.L.M. 173 (1994).

¹⁹ Laws of Nature, *supra* note 7, at 163.

²⁰ Marites Dangilan Vitug, The Politics of Logging – Power from the forest 11 (Philippine Center for Investigative Journalism 1993) (quote is from a speech before the U.S. Senate in January 1900).

²¹ *Id.* at 164-5.

²² *Id.* at 162.

²³ Laws of Nature, *supra* note 7, at 36. Other endangered species of the Philippine forest include the tamaraw, tarsier, and the dwarf Visayan spotted deer. Laws of Nature, *supra* note 7, at 36.

²⁴ Jill Cynthia, “The Money Eating Eagle,” *Pithecopaga jeffreyi*, available at “<http://boojum.as.arizona.edu/~jill/Cynthia/report.html>. The descriptions of the eagle that follow are taken from this source.

²⁵ Bird Forum, Philippine Eagle First Release of Captive Bred,

<http://www.birdforum.net/archive/index.php/t-13895>.

²⁶ The legend is taken from “The Monkey Eating Eagle,” *supra* note 21 at 11.

²⁷ See Antonio Oposa Jr. Address given to the Convention of the Philippines College of Surgeons in Cebu City, May 12, 2000, reprinted at <http://www.oposa.com>.

²⁸ Minors Oposa v. Factoran, 224 SCRA 792 (1993); reprinted in 33 I.L.M. 173 (1994)

²⁹ Cynthia, *supra* note 21; Antonio A. Oposa, Jr., “Environmental Activism and the Fate of Homo Sapiens Sapiens” lecture, 10th Annual Conference on Environmental Law and Policy, Tulane Law School, April 1-2, 2005.

³⁰ Philippine History at <http://www-atdp.berkeley.edu/9931/jvillafil/history.html>

³¹ *Id.*

³² History of the Philippines 2.3, Wikipedia, the Free Encyclopedia, available at <http://en.wikipedia.org/wiki/Philippines/History> (last checked July 10, 2006) [hereinafter “History”]. For a revealing discussion of the China’s great Treasure Fleet that, with ships up to 500 feet-long, dominated trade in this region in the early 1400’s, see Gavin Menzies, 1421; The Year China Discovered America.

³³ See Laurence Bergreen, “Over the Edge of the World” (a detailed account of Magellan’s voyage, during which he was killed on the Philippine island of Cebu).

³⁴ History, *supra* note 7, at 2.3

³⁵ *Id.*

³⁶ Laws of Nature, *supra* note 7, at 165.

³⁷ *Id.* Sevilla was also the seat of the Spanish tobacco monopoly; indeed, the Oposa Carmen is set in the old tobacco building, now the University of Sevilla.

³⁸ Mark Poffenberger, KEEPERS OF THE FOREST 12 (Mark Poffenberger, ed., Kumarian Press 1990).

“So enamored were the Spanish colonizers of the Philippines’ lush, tropical forests that one wrote ‘At least 10 ships can be built every year in these islands, and by taking care of their many forests, even if a hundred ships were built now, there would be enough timber left to construct every year the 10 (I have) mentioned.’” Vitug, *supra* note 18, at 11.

³⁹ Mark Poffenberger, KEEPERS OF THE FOREST 12 (Mark Poffenberger, ed., Kumarian Press 1990)

⁴⁰ Laws of Nature, *supra* note 7, at 165.

⁴¹ *Id.*

⁴² History, *supra* note 29, at 6.2, 8.

⁴³ *Id.* at 8 (putting the number of Filipinos killed by U.S. forces at from 250,000 to 1 million); *Id.* at 7 (estimating Filipino deaths during World War II at 1 million, from all causes). At one point, in reaction to the U.S. war against Filipinos who were asserting the right to self government, U.S. Steel magnate Andrew Carnegie offered to buy the entire country from the U.S. for \$20 million and “give it to the Filipinos so they could be free.” Max Boot, The Savage Wars of Peace 106 (2002).

⁴⁴ See statement of U.S. Senator Beveridge, TAN – *supra* note 18.

⁴⁵ Vitug, *supra* note 18, at 11.

- ⁴⁶ Patricia E. Bixler, Gifford Pinochet. Historic Pennsylvania Leaflet No. 39. (Harold L. Myers ed., Pennsylvania Historical & Museum Commission 1976) available at http://www.dep.state.pa.us/dep/PA_Env-Her/pinotch_bio.htm; see also Poffenberger, *supra* note 35, at 14.
- ⁴⁷ *Id.* “It was American colonial forestry in the Philippines, however, which continued the systematic denudation of the forests. George Ahern, first American director of the Bureau of Forestry, presided over the passage of a forest law in 1904 that gave the bureau power to issue timber concessions on whatever scale and duration they deemed a lumberman’s resources could match. Nearly 20 million hectares of forest lands were under his control.” Vitug, *supra* note 18, at 12.
- ⁴⁸ *Id.* at 11.
- ⁴⁹ *Id.* at 12.
- ⁵⁰ *Id.* at 25.
- ⁵¹ Michael Lewin, *The Political economy of boom-and-bust logging in Indonesia, the Philippines and East Malaysia 1950-1994* 15, UMI Dissertation Services, A Bell & Howell Co., 1997)
- ⁵² Vitug, *supra* note 18, at 13.
- ⁵³ *Id.*
- ⁵⁴ Antonio P. Contreras, *The Kingdom and the Republic-Forest Governance and Political Transformation in Thailand and the Philippines* 61 (Ateneo de Manila University and Antonio P. Contreras, 2003).
- ⁵⁵ *Id.*
- ⁵⁶ Vitug, *supra* note 18, at 25.
- ⁵⁷ *Id.*
- ⁵⁸ Vitug, *supra* note 18, at 25. For the ambiguous, on-again, off-again environmental policies of President Marcos; see also Vitug, *supra* note 18; Lewin, *supra* note 48.
- ⁵⁹ Vitug, *supra* note 18, at 14.
- ⁶⁰ *Id.* at 22.
- ⁶¹ Poffenberger, *supra* note 35, at 14.
- ⁶² Minors Oposa, 33 I.L.M. at 179.
- ⁶³ *Id.* at 177-178 (describing widespread impacts of deforestation); see also “The Laws of Nature” *supra* note 12 at 35.
- ⁶⁴ Section 16, Article II of the 1987 Constitution. Section 16 reads in full “SEC. 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”
- ⁶⁵ Executive Order 192, June 10, 1987, Providing for the Reorganization of the Department of Environment, Energy and Natural Resources; Renaming it as the Department of Environment and Natural Resources.
- ⁶⁶ Rex Victor O. Cruz and Juan M. Pulhin, Verifor: Options for Forest Verification Case Study, Country Case Study 7, “Review of Multisectoral Forest Protection Committees in the Philippines, May 2006, Table 1.
- ⁶⁷ Doyo *supra* n1 at 1.
- ⁶⁸ *Id.* The account of the fire and Oposa’s upbringing and education that follow are taken from this source, and from personal interview, *supra* note 1.
- ⁶⁹ *Id.* at 2.
- ⁷⁰ *Id.* at 3.
- ⁷¹ *Id.*
- ⁷² *Id.*
- ⁷³ *Id.* at 5.
- ⁷⁴ Email of Antonio A. Oposa Jr. to Oliver A. Houck, attachment “RE CHILDRENS CASE, August 6, 2006, on file with author.
- ⁷⁵ Antonio A. Oposa, Jr., “Environmental Activism and the Fate of Homo Sapiens Sapiens” lecture, 10th Annual Conference on Environmental Law and Policy, Tulane Law School, April 1-2, 2005.
- ⁷⁶ See Oposa email, n. 72 *supra*.
- ⁷⁷ “The Laws of Nature,” *supra* note 7, at 70 (noting over 2 million members of indigenous communities in the Philippines). For the number of languages see <http://www.philippineembassy-usa.org/about/population.htm>.

- ⁷⁸ The Laws of Nature, *supra* note 7, at 168, see also Vitug, *supra* note 18, at 149 (describing Factoran's attempts to establish local community forest management which suffered from inadequate financial and political support).
- ⁷⁹ *Id.* at 166.
- ⁸⁰ The Laws of Nature, *supra* note 7, at 166 (quoting Robin Broad, The Political Economy of Natural Resources: Case Studies of Indonesian and Philippine Forest Sectors, Journal of Developing Areas (April 1995)(cited in Abramovitz, State of the World 1998) p.29)).
- ⁸¹ Daniel V. Gatmaytan, The Illusion of Intergenerational Equity : Oposa v. Factoran as Pyrrhic Victory, 15 Geo Int'l Env'tl L. Rev. 457, 463 (2003).
- ⁸² Doyo *supra* note 1, at 4.
- ⁸³ See Oposa email, *supra* note 72.
- ⁸⁴ For a description of the rocky relationship between early Philippine NGO's and Secretary Factoran see Vitug, *supra* note 18, at 51-54.
- ⁸⁵ *Id.*
- ⁸⁶ *Id.*
- ⁸⁷ *Id.*
- ⁸⁸ There is even the implication that Factoran suggested the lawsuit. See Doyo *supra* note 1, at 4, quoting Oposa "To the credit of Factoran, he called me and suggested that we raise the issue in a forum."
- ⁸⁹ *Id.*
- ⁹⁰ Coordinated Enforcement, *supra* note 2 at 2.
- ⁹¹ Antonio A. Oposa, Jr., "Intergenerational Responsibility in the Philippine Context as a Judicial Argument for Public Action on Deforestation," 4th International Conference on Environmental Compliance and Enforcement, April 22-26, 1996, at 2 [hereinafter "International Responsibility"].
- ⁹² Transparency International Corruptions Perception Index 2004, Press Release, Oct. 10, 2004, available at http://ww1.transparency.org/pressreleases_archive/2004/2004.10.20.cpi.en.html.
- ⁹³ See History, *supra* note 29, at 11.4.
- ⁹⁴ International Responsibility, *supra* note 87, at 2.
- ⁹⁵ Minors Oposa, 33 I.L.M. at 179.
- ⁹⁶ Approximately 850,000 hectares of virgin forest remained. *Id.*
- ⁹⁷ *Id.* at 178.
- ⁹⁸ The account of finding plaintiffs and the quotes that follow are taken from Oposa email, *supra* n. 72. Oposa states that his most difficult feat of persuasion was his wife, a "practical minded person" who did not see why he had to "tackle the entire Philippine Government."
- ⁹⁹ Juan Antonio Oposa, Anna Rosario Oposa, Jose Alfonso Oposa, Roberta Nicole Sadiua, Carlo Flores, Amanda Salud Flores, Patrisha Flores, Gianina Dita R. Fortun, George II Misa, Ma. Concepcion Misa, Benjamin Alan V. Pesigan, Jovie Marie Alfaro, Maria Concepcion T. Castro, Johanna Desamparado, Carlo Joaquin T. Narvasa, Ma. Margarita Saenz, Jesus Ignacio Saenz, Ma. Angela Saenz, Marie Gabrielle Saenz, Kristine King, Mary Ellen King, May King, Golda Marthe King, David Ian King, David Endriga, Francisco Endriga, Therese Victoria Endriga, Jose Ma. Avaya, Regina Ma. Abaya, Marilyn Cardama, Mario Jr. Cardama, Mariette Cardama, Clarissa Oposa, Ann Marie Oposa, Nagel Oposa, Imee Lynn Oposa, Philip Joseph Quipit, Stephen John Quipit, Isaiah James Quipit, Bughaw Cielo Bibal, Crisanto Bibal, Anna Bibal, Daniel Bibal, Fransisco Bibal. *Minors Oposa*, 33 I.L.M. at 174-75.
- ¹⁰⁰ Challenges to government actions by those claiming to represent all taxpayers have not found favor in US courts, *Frothingham v. Mellon*, 262 U.S. 447, 479 (1923). In this case, the Philippine Court sidestepped the taxpayer aspect and found class representation more directly: 'The subject matter of the complaint is of common and general interest not just to several but to all the citizens of the Philippines. Since the parties are so numerous it is impossible to bring them all before the court.' *Minors Oposa*, 33 I.L.M. at 184.
- ¹⁰¹ *Minors Oposa*, 33 I.L.M. at 176.
- ¹⁰² *Id.* at 180-81
- ¹⁰³ Gatmaytan, *supra* note 80, at 460.
- ¹⁰⁴ See Oposa email, n. 72 *supra*.
- ¹⁰⁵ Gatmaytan, *supra* note 80, at 461.
- ¹⁰⁶ *Id.*
- ¹⁰⁷ *Id.*

¹⁰⁸ Antonio A. Oposa, Jr., “Environmental Activism and the Fate of Homo Sapiens Sapiens” *supra* n. 1; Minors Oposa, 33 I.L.M. at 175-76.

¹⁰⁹ Edith Weiss Brown, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (1989); [hereinafter Weiss]; see also Edith Brown Weiss, Our Rights and Obligations to Future Generations for the Environment, 84 Am. J. Int’l L. 198 (1990); Intergenerational Equity in International Law, 1987 Proc. Ann. Meeting Am. Soc’y Int’l L. 126; The Planetary Trust: Conservation and Intergenerational Equity, 11 Ecology L.Q. 495 (1984); In Fairness to Future Generations, Environment, Apr. 1990, at 7.

¹¹⁰ Antonio A. Oposa, Jr., “Environmental Activism and the Fate of Homo Sapiens Sapiens” *supra* n1.
¹¹¹ In fact, Oposa took the liberty of sending Professor Weiss’s article on “Intergenerational Equity” to the Court, as “proof” that “such an animal” existed. Oposa email *supra* n. 72.

¹¹² See Minors Oposa, 33 I.L.M. at 181.

¹¹³ *Id.* at 186.

¹¹⁴ *Id.* at 185.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 187.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 188.

¹¹⁹ *Id.* at 195-96.

¹²⁰ *Id.* at 196.

¹²¹ *Id.* at 193.

¹²² *Id.* at 205.

¹²³ Hon. Chief Justice Hilario G. Davide, “The Role of the Judiciary in Scaling Up Poverty Reduction” speech, WorldBank Global Conference on Scaling Up Poverty Reduction, Shanghai, China, May 25-27, 2004. Justice Davide went on to write an inspired dedication for Oposa’s book on Philippine environmental law, *A Legal Arsenal*, *supra* n. 12.

¹²⁴ Minors Oposa, 33 I.L.M. at 177-78.

¹²⁵ Gatmaytan *supra* n. 80 at 484, 5.

¹²⁶ From the world’s leading of timber, only a few decades ago, the Philippines now is one of the largest importers in all of Asia suffering, in the year 2000, a \$517 trade deficit. See Vitug, *supra* note 18 at 25; <http://www.da.gov.ph/abat/profile.htm>; Antonio Contreras, *The Kingdom and the Republic Forest Governance and Political Transportation in Thailand and the Philippines* (2003) at 55.

¹²⁷ Gamantan, *supra* note 80, at 459.

¹²⁸ *Id.*

¹²⁹ *Id.* at 467; Coordinated Enforcement *supra* note 2, at 5.

¹³⁰ See Mongabay, Philippines: Environmental Profile, available at <http://rainforests.mongabay.com/20philippines.htm> (last checked Aug. 14, 2006).

¹³¹ Vitug, *supra* note 18, at 1.

¹³² *Id.*

¹³³ *The Wrath of Nature*, Asia Week, Aug. 20-27, 1999,

<http://www.asiaweek.com/asiaweek/99/aw.0702.to.0820/0820/nat5.html>.

¹³⁴ Carlos H. Conde, *Danger of Philippine Landslides Often Ignored, Critics Say*, N.Y. TIMES, Feb. 21, 2006 at A3.

¹³⁵ See Gatmaytan, *supra* note 80 at 467-68, whose phrases describing the case (“since the practice [timber cutting] continues, it is difficult to see how Oposa can be construed as a victory for the environment,” the Court’s rulings on intergenerational equity were mere “obiter dictum,” the concept of intergenerational equity “has no practical effect,” and, in the end, the case remains “largely ignored”) seem rather extreme. Oposa would be, and is, the first to say that his case did not stop logging in the Philippines. See Antonio A. Oposa, Jr., “Environmental Activism and the Fate of Homo Sapiens Sapiens” lecture, 10th Annual Conference on Environmental Law and Policy, Tulane Law School, April 1-2, 2005. But that it provided the momentum to curb commercial harvests and, then, a number of other unsustainable practices, seems beyond cavil. See the discussion following.

¹³⁶ See Executive Order, *supra* note 61; see also Antonio A. Oposa, Jr., “Environmental Activism and the Fate of Homo Sapiens Sapiens” lecture, 10th Annual Conference on Environmental Law and Policy, Tulane Law School, April 1-2, 2005.

¹³⁷ See Coordinated Enforcement, *supra* n. 2. at 235, 239; see also Intergenerational Responsibility *supra* n. 90 at 5 (“Given a sympathetic bureaucracy, the government administrators may just be looking for additional ammunition with which they can enact a policy that they wanted to do in the first place but could not on account of political considerations and sensitivities.”)

¹³⁸ Cruz, *supra* note 64, at 8-9.

¹³⁹ *Id.* at 3.

¹⁴⁰ See Mongabay, Philippines: Environmental Profile, available at <http://rainforests.mongabay.com/20philippines.htm> (last checked Aug. 14, 2006).

¹⁴¹ Coordinated Enforcement, *supra* note 2, at 238.

¹⁴² DENR cancels 8,000 timber permits due to illegal logging, Manila Times, Jan. 10, 2006, available at www.manilatimes.net/national/2006/jan/10/yehey/top_stories/20060110top9.html; Filipino Region Imposes Logging Ban: NGO Caution WTO Implications, Illegal Logging Info, Apr. 14, 2006, available at www.illegal-logging.info/newws.php?newsId=1378; 14 Draw Prison terms for Illegal logging, Illegal Logging Info, Apr. 26, 2006, available at www.illegal-logging.info/newws.php?newsId=1396; Ban on Illegal Activities in Shilan Forest sought, Illegal Logging Info, May 13, 2006, available at www.illegal-logging.info/newws.php?newsId=1444; Rebel group claims collusion in Caraga log sector, Illegal Logging Info, June 10, 2006, available at www.illegal-logging.info/newws.php?newsId=1499; Jason Gutierrez, President Supporting Bills on Solar Power, Forests, Maritime Pollution, Leaded Gasoline, International Environmental Reporter, S-33, Jan. 1, 2005.

¹⁴³ Cruz, *supra* note 64, at 2.

¹⁴⁴ *Id.* at 2-3.

¹⁴⁵ *Id.* at 1.

¹⁴⁶ Erik Hansen & Marina Muran, Allan Mustard, ed., Russian Federation Solid Woods Products Annual 2006, USDA Foreign Agricultural Service Global Agricultural Information Network [GAIN] Report RS6007, p. 6, Feb. 15, 2006 (stating with bureaucratic restraint, “illegal logging continues to pose significant threat to sustainable development of the forest sector and poses a challenge for the Russian government”).

¹⁴⁷ Michael Kepp, “Environment Ministry Officials Among 30 Arrested for Illegal Timber Sales in Brazil”, 29 International Environmental Reporter 428, (June 14, 2006).

¹⁴⁸ See Nora Boustany, “Risking His Life for Grass-Roots Environmentalism”, <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/28/AR2006042801970.html>, April 29, 2006, A12.

¹⁴⁹ From Orphan to King: Orangutans (PBS television broadcast June 18, 2006).

¹⁵⁰ Jorge Cappato, “Who was Chico Mendes?” United Nations Environmental Programme (UNEP) Global 500 Forum, available at http://www.global500.org/feature_6.html.

¹⁵¹ See Boustany *supra* note 146, at 1.

¹⁵² See Gamaytan, *supra* note 80 at 484 (eight opinions as of 2003, does not include Concerned Residents of Manila Bay).

¹⁵³ *Id.* at 468. This said, Oposa has since at the request of members of the Philippine Congress, written citizen suit and protection provisions into new Clean Air and Solid Waste Management legislation. See Oposa email, *supra* note 72.

¹⁵⁴ See Gamaytan, *supra* note 80 at 472.

¹⁵⁵ See Daniel A. Farber, “From Here to Eternity: Environmental Law and Future Generations,” 2003 Ill. L. Rev. 289 (2003) (questioning the discounting of future impacts); Frank Ackerman and Liza Heinzerling, On Knowing the Prize of Everything and the Value of Nothing (challenging cost-benefit decisionmaking); Douglas A. Kysar, “Law, Environmental and Vision,” 97 Northwestern L. Rev. 674 (2003) (promoting “ecological economics”).

¹⁵⁶ Minors Oposa, 33 I.L.M. at 182.

¹⁵⁷ *Id.* at 201 (“The Court has also declared that the complaint has alleged and focused upon “one specific fundamental legal right -- the right to a balanced and healthful ecology.” There is no question that “the right to a balanced and healthful ecology” is “fundamental” and that, accordingly, it has been “constitutionalized.” But although it is fundamental in character, I suggest, with very great respect, that it cannot be characterized as “specific,” without doing excessive violence to language”) (Feliciano, J., concurring).

¹⁵⁸ Ysmael v. Deputy Exec. Sec’y, G.R. No. 79538, Oct. 18, 1990.

¹⁵⁹ Tano, et al. v. Socrates, GR No. 110249, 278 SCRA 154 (1997), available at <http://www.supremecourt.gov.ph/jurisprudence/1997/aug1997/110249.htm>.

¹⁶⁰ *Id.*

¹⁶¹ Concerned Residents of Manila Bay v. DENR, Republic of the Philippines, Fourth Judicial Region, Regional Trial Court, Branch 20, Imus, Davite 13 September, 2002, cited in Lyster, R. 'Philippines Regional Court Reiterates Constitutional Right to Environment: The Manila Bay Case' *APJEL* vol 7 at 1-4.

¹⁶² *Id.*; see also Laws of Nature, *supra* note 7, at 137 ("In the case of Manila Bay, fisherman attest that 90 percent of what their fishing nets catch is pure and simple garbage – plastics, cans, foam,, and the other discarded flotsam and jetsam of the modern human being. While the standard for fecal coliform bacteria for marine waters fit for swimming is only 200 units, in the mid-1990's some parts of Manila Bay's waters were found to contain almost, one million units").

¹⁶³ Lyster, *supra* note 160 at 3.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 3-4.

¹⁶⁶ The Manila Bay case, with its attendant publicity and its manifold difficulties in fashioning judicial solutions for environmental problems at political stalemate, reflects the reluctant-warrior philosophy of a seasoned environmental lawyer. Oposa would write, for all its jurisprudential value and implications in constitutional and political law, remedial law and environmental law, the important lesson learned is that "environmental controversies and issues are not resolved by legal action and in the legal forum." Oposa *supra* n. 2 at 5. However, he continued, environmental lawsuits secure a vital role in stimulating "the molecules of thought" in the minds of government and the general public, in subjecting the conflict to "dispassionate scrutiny" and orderly consideration, and by providing ammunition to a "sympathetic bureaucracy" which they can "enact a policy that they wanted to in the first place" but did not have the clout. *Id.* One senses him recalling his dealings with Secretary Factoran in *Minors Oposa*.

¹⁶⁷ See generally Gatmaytan, *supra* n. 80; Ma. Socorro Z. Manguiat & Vicente Paolo B. Yu III, Maximizing the Value of Oposa v. Factoran, 15 *Geo. Int'l Env'tl. L. Rev.* 487 (2003); Paul A. Barresi, Fairness to Future Generations: An Intragenerational Alternative to Intergenerational Equity in the International Environmental Arena, 11 *Tul. Env'tl. L. J.* 59 (1997); Paul A. Barresi, Advocacy, Frame, and the Intergenerational Imperative: A Reply to Professor Weiss on "Beyond Fairness to Future Generations" 11 *Tul. Env'tl. L. J.* 425; G.F. Maggio, Inter/Intra-Generational Equity: Current Applications Under Constitutional Law for Promoting the Sustainable Development of Natural Resources, 4 *Buff. Env'tl. L.J.* 161 (1997).

¹⁶⁸ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), June 25, 1998, 38 *ILM* 517 (1999). Section 7: "[7] *Recognizing also* that every person has the right to live in an environment adequate to his or her health and wellbeing, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations. "To be sure *Minors Oposa* did not invent these concepts, but it gave them legitimacy and momentum for their incorporation in law.

¹⁶⁹ Tennessee Valley Authority v. Hill, 437 U.S. 153, (1978). For the impact of TVA v. Hill opinion, see Holly Doremus, "The Story of TVA v. Hill: A Narrow Escape for a Broad New Law," in Richard Lazarus and Oliver Houck, *Environmental Law Stories*, 109-140.

¹⁷⁰ Calvert Cliffs Coordinating Committee, Inc. v. U.S. Atomic Energy Commission, 449 F.2d. 1109. For the impact of the Calvert Cliffs opinion, see A. Dan Tarlock, "The Story of Calvert Cliffs: A court Construes the National Environmental Policy Act to Create a Powerful Cause of Action," in *ENVIRONMENTAL LAW STORIES*, *supra* n. 168 at 77-107.

¹⁷¹ Email of Antonio Oposa, "Emergency Call from Tony Oposa – Murder of Environmental Guardian and Bounty on Tony Oposa." (4/17/06)

¹⁷² INECE Newsletter, *supra* note 13.

¹⁷³ *Id.*

¹⁷⁴ See TAN 7 *supra*; see also Lee, *supra* note 8.

¹⁷⁵ INECE Newsletter, Newsletter 9 "Visayan Sea Squadron Begins Patrols in Philippines, Feb. 2004, available at http://inece.org/newsletter/9/regional_asia.html.

¹⁷⁶ *Bantay Dagat Chief Attacked at Gate of His House*, Sunstar, April 13, 2006, available at <http://sunstar.com.ph/static/net/2006/04/13/bantay.dagat.chief.attacked.at.gate.of.his.house.html>.

¹⁷⁷ *Id.*

178

Id.

179

Cop Nabbed on Slay of Bantay Dagat Chief, Sunstar, April 19, 2006, available at <http://www.sunstar.com.ph/static/net/2006/04/18/cop.nabbed.on.slay.of.bantay.dagat.chief.html>.

180

Laws of Nature, *supra* note 13, at 45.

181

Oposa email, *supra* note 147.

181A

Id.

182

The description that follows of the filing of the first Russian Forest case, Verkh. Sud RF Ruling of 17 Feb. 1998 (Zlotnikova T.V., Lebedeva K.E. et. al. v. Russian Federation) is taken from an interview by Ilya Fedyaev, LL.M. of Tulane Law School, 2005 of Vera Mischenko, President Ecojuris, in Moscow, Russia (Jan. 13, 2005) [hereinafter Interview with Vera Mischenko].

183

V. K. TEPLYAKOV ET AL., A HISTORY OF RUSSIAN FORESTRY AND ITS LEADERS, at v (Department of Natural Resource Science and Cooperative Extension, Washington State University 1998), available at <http://www.forest.ru/eng/publications/history/02.html> (last visited Aug. 9, 2006).

184

Id. at 10, available at <http://www.forest.ru/eng/publications/history/03.html> (last visited Aug. 9, 2006).

185

PAUL THEROUX, THE GREAT RAILWAY BAZAAR (Houghton Mifflin) (1975) (The author, out of boredom, almost jumped out the window.).

186

JOHN BARTLETT, FAMILIAR QUOTATIONS 743 (15th ed. 1980). In Churchill's fine phrase: "[Russia] is a riddle wrapped in a mystery inside an enigma."

187

KEVIN KLOSE, RUSSIA AND THE RUSSIANS: INSIDE SOCIOLOGY (WW Norton & Co. Inc.) (1984) (describing Russia's schizophrenia vis-à-vis the West).

188

See USDA Foreign Agricultural Service Report No. RS4007, *Russian Federation Solid Woods Products Annual Report 2004*, at www.fas.usda.gov/gainfiles/200402/146105502.pdf (last visited Aug. 10, 2006). The area of 850 million hectares covered with forest vegetation accounts for 22% of global forest area and 50% of the total area of Russia (1710 million ha). The growing stock of 82 milliard m³ accounts for 25% of the total volume of world's forests. The forest resources of Russia are the largest of all countries. See also Julia Levin, *Russian Forest Laws: Scant Protection During Troubled Times*, 19 ECOLOGY L. Q. 685, 688 (1992) (describing how Russian forests make significant contributions to world oxygen levels, and to the removal of greenhouse gases, and how Russians already use 2,500 native plant species for medicinal purposes, thus rendering equally high biological services).

189

V. K. TEPLYAKOV ET AL, *supra* note 183, at v. The description of forest vocabulary that follows is taken from this source.

190

Josh Wilson, *A Midsummer's Intro to Russian Mythology*, The School of Russian and Asian Studies Newsletter (June 16, 2005), at <http://www.sras.org/news2.phtml?m=387> (last visited Aug. 9, 2006).

191

V. K. TEPLYAKOV ET AL, *supra* note 183, at v.

192

Id. at 2. The description of his actions and those of Peter the Great that follow are taken from this text.

193

Id. at 14.

194

Id. at 5.

195

Id. at 75.

196

Id. at 7. The description of pre and post revolutionary forest policies that follows is taken from this source.

197

Id. at 10.

198

Forest critic quote.

199

V. K. TEPLYAKOV ET AL, *supra* note 183, at 11.

200

The Forest Case: The Story and the Outcome (Feb. 1999), The Newsletter of Socio-Ecological Union (Socio-Ecological Union, Moscow, Russia), at <http://www.seu.ru/seu-news/eng/soceco02.htm>.

201

The author was told this story on two occasions, by two different Soviet officials, one in the Institute for State and Law and the other in the Kremlin, during a science and environment exchange in 1977. Setting aside the unlikely possibility that this story was invented for the occasion, it clearly demonstrates something that Russians want to believe, true or not, which says something about values.

202

V. K. TEPLYAKOV ET AL, *supra* note 183, at 10. The description of the first categories that follows is taken from this source.

203

In some zapovedniki, even fauna of the surrounding area are excluded. See Elizabeth Barrett Ristroph, *Leave it To the Scientist!: An Examination of Russian Environmental Policy-Making*, 10 ALB. L.

ENVTL. OUTLOOK 33, 57 (2005) (providing an overview of the history and present management of zapoveniki and discussing how in many such reserves human intrusion is limited to scientific study and measurements) (“Zapovedniki were the brainchild of early Soviet scientists who sought to use these nature preserves as “reference points” (etalony) for pristine ecosystems, unspoiled by human encroachment.”)(citations omitted).

²⁰⁴ CONSTANTINE PLESHAKOV, *STALIN'S FOLLY: THE TRAGIC FIRST TEN DAYS OF WORLD WAR II ON THE EASTERN FRONT* 9 (Houghton Mifflin 2005).

²⁰⁵ See generally David M. Gantz, *The Soviet-German War 1941-1945*, 1, 11, available at <http://www.strom.clemson.edu/publications/sg-war41-45.pdf> (last visited Aug. 10, 2006) (“The winter campaign began with the Red Army’s massive offensives at Rzhev (Operation Mars) and Stalingrad (Operation Uranus) in mid-November 1942 and ended with the surrender of German Sixth Army at Stalingrad and massive Red Army offensives along virtually the entire expanse of the German Eastern Front. Although the Red Army fell short of fulfilling Stalin’s ambitious objectives, the winter campaign represented the second and most important turning point in the war. After its Stalingrad defeat, it was clear that Germany would lose the war. Only the scope and terms of that defeat remained to be determined. The Red Army’s ensuing summer-fall campaign of 1943 produced the third major turning point of the war. After its defeat in the Battle of Kursk, it was clear that German defeat would be total. Only the time and costs necessary to effect that defeat remained to be determined.”)

²⁰⁶ Yehuda Z. Blum, *Russia Takes Over the Soviet Union’s Seat at the United Nations*, 3 EUR. J. INT’L LAW 354, 355 n.4 (1992); see also V. K. TEPLYAKOV ET AL, *supra* note 183, at 11.

²⁰⁷ See Levin, *supra* note 188, at 686.

²⁰⁸ K. TEPLYAKOV ET AL, *supra* note 183, at 11.

²⁰⁹ *Id.*; Russian Federation Forest Code, Russian Federation Federal Act No. 22-FZ (1997) [hereinafter Forest Code].

²¹⁰ K. TEPLYAKOV ET AL, *supra* note 183, at 11; Forest Code.

²¹¹ Forest Code, art. 56.

²¹² *Id.*

²¹³ National Academy of Sciences, *Public Participation in Environmentally Sound-Decision-making: Legal Aspects*, in *THE ROLE OF ENVIRONMENTAL NGOS - RUSSIAN CHALLENGES, AMERICAN LESSONS: PROCEEDINGS OF A WORKSHOP* 179, 188 (Committee on Improving the Effectiveness of Environmental Nongovernmental Organization in Russia, Office for Central Europe and Eurasia Development, Security and Cooperation, Policy and Global Affairs, National Research Council 2001) [hereinafter *The Role of Environmental NGOs*], available at <http://www.nap.edu/catalog/10240.html> (last visited Aug. 10, 2006).

²¹⁴ V. K. TEPLYAKOV ET AL, *supra* note 183, at 1 (quoting Alexander S. Pushkin) (“The friends of mine! Take crozier yours. Move into the woods, stroll in the valleys.”); Levin, *supra* note 188, at 686 (quoting Anton Chekhov) (describing Siberia as a “sea of forests”) (citations omitted); In Pasternak’s *Dr. Zivago* the Russian landscape is a powerful character in its own right.

²¹⁵ Leslie Powell, *Western and Russian Environmental NGOs: A Greener Russia?*, in *THE POWER AND LIMITS OF NGOS: A CRITICAL LOOK AT BUILDING DEMOCRACY IN EASTERN EUROPE AND EURASIA* 126, 149 n.6 (Sarah E. Mendelson and John K. Glenn eds., 2002).

²¹⁶ *Id.*

²¹⁷ See generally Ristroph, *supra* note 203 (discussing the role of scientists and scientific institutions in Soviet environmental policy).

²¹⁸ *Id.* at 35.

²¹⁹ Institute of State and Law of the Russian Academy of Sciences at <http://www.igpran.ru/engl/index.htm> (last visited Aug. 10, 2006).

²²⁰ Powell, *supra* note 215 at 130; see also Oliver Houck, *Lenin’s Trees*, 104, 107-108 (on file with author).

²²¹ *Id.*

²²² See *supra* text accompanying note 168.

²²³ Powell, *supra* note 215, at 130.

²²⁴ *Id.*; Xenia Soubotin, *12 Years Later: Building Civil Society Through Environmental Advocacy in Russia* (June 15, 2003), available at <http://www.pacificenvironment.org/article.php?id=183> (last visited Aug. 10, 2005).

²²⁵ Powell, *supra* note 215, at 130.

²²⁶ *Id.*

²²⁷ Kathleen E. Watters, *Initial Environmental Examination* (1994), available at <http://63.220.11.81/ee-env/216.nsf/d10d1c29aa47aa0385256a8d00785e0b/67a989ba43c2eaed85256a93004e51e8?OpenDocument> (on file with author).

²²⁸ The Role of Environmental NGOs, *supra* note 213, at 187.

²²⁹ Levin, *supra* note 188, at 711 n.231. *Zakon Rossiskoi Federatsii: Ob okhrane okrzhaiushche prirodnoi Sredi* [Law of the Russian Federation: On the Protection of the Natural Environment], Dec. 19, 1991, 10 *Vedomosti*, item 457 (1992) (Russian Federation) [hereinafter *On Environmental Protection*]. President Boris Yeltsin signed Russia's first comprehensive environmental law, *On Environmental Protection* in December 1991. In particular, the law required that government agencies prepare an expertisa (similar to the Environmental Impact Statement required for agency action in the United States) whenever the agencies' actions could adversely affect the environment. Levin, *supra* note 188, at 711. The law also contained a citizen suit provision which allowed citizens to challenge in court, agency projects or decision that might adversely affect human health. *Id.*

²³⁰ Konstitutsiia Rossiiskoi Federatsii [Constitution of the Russian Federation] [Konst. Rf. (1993)] (Russ.). For an English translation of the Constitution, refer to G. Danilenko & W. Burnham, *Law and Legal System of the Russian Federation* 591 (1999). Art. 42 provides the constitutional right of each person to a healthy environment and covers the damage caused by environmental violations to health or property. Under Art. 32, citizens have the right to participate in the governing of the state, either directly or via their representatives. In order to achieve goals of nature protection, and to efficiently participate in environmental decision-making, citizens have the right to associate under Art. 30. They can also create and join trade unions in order to protect social, professional and economic rights and interests. Denial of access to environmental information can be appealed to the court as a breach of the citizens' constitutional right, under the provisions of Arts. 42, 24, 29(4), 41(3), 46 and 52. Art. 58 states that it is everyone's duty to preserve nature and the environment and to treat natural resources carefully.

²³¹ Grazhdanskii Kodeks RF (Civil Code) [GK RF] (Russ.) [hereinafter *Civil Code*] art. 116. This article establishes citizens' rights to appeal in the Supreme Court against non-normative acts of the RF President and the RF Government, and against normative acts of ministries and agencies.

²³² See *On Ecological Examination*, Russian Federation Federal Act No. 174-FZ, art. 11 (1995) [hereinafter *Ecological Examination Act*] (federal environmental expertise must be carried out for "the materials establishing transfer of the forest lands into non-forest lands."). Also, note that art. 22 of the previous forest code stated that "the transfer of forest lands into non-forest lands in Group I forests to be used for purposes not involving forest management or use of forest stock shall be made in exceptional cases, with the permission of the RF government, in agreement with the respective organ of state power," the Russian Federation Forest Code, Russian Federation Federal Act No. 4613-1 (1993) [hereinafter *1993 Forest Code*]. This "exceptional case" provision is not mentioned in art. 63 of the current Forest Code – "transfer of first group lands into non-forest for reasons not connected with forestry management, forest fund use, and/or withdrawal of forest lands, if related to first group forests, is fulfilled by the Government of Russian Federation." Forest Code. In effect, the current Forest Code relaxes the transfer standard but retain procedural protections.

²³³ "An ecological examination shall be based on the following principles: presumption of potential ecological danger of any intended economic or other activity" *Ecological Examination Act*, chapt.1, art. 3.

²³⁴ *Ecological Examination Act*, art. 11 (provides for obligatory environmental expertise for drafts of normative and non-normative legal acts whose implication can lead to negative effects to the environment); see also *Forest Code*, art. 65 ("The sites for the building of facilities affecting the state and reproduction of forests shall be coordinated with the organ of state power of the RF subject and with the respective territorial agency of the Federal forestry agency, with mandatory performance of state ecological expert examination."); see also *Forest Code*, art. 63 (describing how conversion of forest lands into non-forest lands for purposes not related to forestry shall be allowed only in the presence of a positive conclusion of the state ecological expert examination).

²³⁵ The Role of Environmental NGOS, *supra* note 213, at 189.

²³⁶ Interview with Vera Mischenko, *supra* note 182.

²³⁷ The Role of Environmental NGOS, *supra* note 213, at 188 (describing how Russia, Georgia and Armenia have similar legislation problems with reference to the oil mafia, timber mafia, fishing mafia, and corruption, rampant among the highest and middle rank officials responsible for granting licenses and permission to carry out projects).

²³⁸ Interview with Vera Mischenko, *supra* note 182.

²³⁹ *Id.* (describing how entities interested in certain plots of land applied to authorities of the state of Russia for a permit with relevant documents, including various agreements, feasible studies and approval of local inhabitants).

²⁴⁰ Memorandum from Ilya Fedyaev on Russian Forest Research, to Professor Oliver Houck (Nov. 10, 2004) [hereinafter Fedyaev Memorandum on Russian Forest Research] (on file with the author) (citing Podolsk Parish, at http://webcenter.ru/~ecojuris/RPUBLIC/B3/b3_4.htm (last visited Aug. 10, 2006)). The description of this case is taken from this source.

²⁴¹ *Id.* (citing Green Party v. Government of Leningrad Region [1998] Leningrad Arbitration Court (Russ.), at http://webcenter.ru/~ecojuris/RPUBLIC/B3/b3_5.htm (last visited Aug. 10, 2006)). The description of this case is taken from this source.

²⁴² *Id.* (citing V. Kolesnikova, *Forest Management on the High Level* (Aug. 1999), Forest Bulletin Issue 11, available at <http://www.forest.ru/rus/bulletin/11/6.html> (last visited Aug. 10, 2006)). The data that follows are taken from this source.

²⁴³ *Id.*

²⁴⁴ Verkh. Sud RF Ruling of 17 Feb. 1998, available at <http://ecojuris.fatal.ru/RJURIS/vsles1.htm> (last visited Aug. 10, 2006).

²⁴⁵ Fedyaev Memorandum on Russian Forest Research, *supra* note 240 (citing V. Kolesnikova, *Forest Management on the High Level* (Mar. 1998), Forest Bulletin Issue 6-7, available at <http://www.forest.ru/rus/bulletin/06-07/12.html> (last visited Aug. 10, 2006)).

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*; see also Verkh. Sud RF Ruling of 17 Feb. 1998, *supra* note 244. For a description of the case history in English, see Vera Mischenko & Ericka Rosenthal, Citizen Environmental Enforcement in Russia: The First Successful Nation-Wide Case, Fifth International Conference on Environmental Compliance and Enforcement 419-421, available at <http://www.inece.org/5thvol1/mischenko.pdf> (last visited Aug. 10, 2006).

²⁴⁹ Verkh. Sud RF Ruling of 17 Feb. 1998, *supra* note 244.

²⁵⁰ Mischenko & Rosenthal, *supra* note 248, at 420.

²⁵¹ See 1993 Forest Code, art. 22; Ecological Examination Act, art.11. [The complaint alleged that “the Government of the Russian Federation has issued decrees transferring land from “first group” forests without conforming to the necessity that such transfers are to be made under exclusive circumstances, as stipulated by the law. Furthermore, plaintiffs believe that these government decrees should have been subject to a preliminary state ecological examination prior to their issuance, and in the opinion of petitioners, a requisite examination was not undertaken, despite the fact that such decrees can have a negative influence on the surrounding environment.”] RF Ruling of 17 Feb. 1998, *supra* note 244. Because some of the decrees challenged predated 1977, the Court treated the case under forest law existing at the time, which remained “exclusivity.” See 1993 Forest Code, art. 22.

²⁵² Mischenko & Rosenthal, *supra* note 248, at 419; Fedyaev Memorandum on Russian Forest Research, *supra* note 239 (citing V. Kolesnikova, *Forest Management on the High Level* (Aug. 1999), Forest Bulletin Issue 11, available at <http://www.forest.ru/rus/bulletin/11/6.html> (last visited Aug. 10, 2006)).

²⁵³ Mischenko & Rosenthal, *supra* note 248, at 419; Fedyaev Memorandum on Russian Forest Research, *supra* note 240 (citing V. Kolesnikova, *Forest Management on the High Level* (Aug. 1999), Forest Bulletin Issue 11, available at <http://www.forest.ru/rus/bulletin/11/6.html> (last visited Aug. 10, 2006)).

²⁵⁴ *Id.*

²⁵⁵ Interview with Vera Mischenko, *supra* note 182.

²⁵⁶ Fedyaev Memorandum on Russian Forest Research, *supra* note 240 (citing V. Kolesnikova, *Forest Management on the High Level* (Mar. 1998), Forest Bulletin Issue 6-7, available at <http://www.forest.ru/rus/bulletin/06-07/12.html> (last visited Aug. 10, 2006)).

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

- 260 *Id.*
- 261 Fedyayev Memorandum on Russian Forest Research, *supra* note 240 (citing V. Kolesnikova, *Forest Management on the High Level* (Mar. 1998), Forest Bulletin Issue 6-7, available at <http://www.forest.ru/rus/bulletin/06-07/12.html> (last visited Aug. 10, 2006)).
- 262 *Id.*
- 263 The Forest Case: The Story and the Outcome, *supra* note 200.
- 264 Fedyayev Memorandum on Russian Forest Research, *supra* note 240 (citing V. Kolesnikova, *Forest Management on the High Level* (Aug. 1999), Forest Bulletin Issue 11, available at <http://www.forest.ru/rus/bulletin/11/6.html> (last visited Aug. 10, 2006)).
- 265 Mischenko & Rosenthal, *supra* note 248, at 420.
- 266 Verkh. Sud RF Ruling of 17 Feb. 1998, *supra* note 244. [“Representatives of the Government of the Russian Federation agree with the declared requirement and believe that the transfer of “first group” forests into non-forested land is not a violation of the ecological examination requirement, as the passing of decrees in and of themselves cannot have negative effects on the environment. They argue that the realization of decrees is possible only after acceptance by local authorities of the decision to transfer these ‘first group’ forests into non-forested land.”]
- 267 Mischenko & Rosenthal, *supra* note 248, at 420.
- 268 Fedyayev Memorandum on Russian Forest Research, *supra* note 240 (citing V. Kolesnikova, *Forest Management on the High Level* (Aug. 1999), Forest Bulletin Issue 11, available at <http://www.forest.ru/rus/bulletin/11/6.html> (last visited Aug. 10, 2006)).
- 269 Mischenko & Rosenthal, *supra* note 248, at 420.
- 270 *Id.* See also Fedyayev Memorandum on Russian Forest Research, *supra* note 240 (citing V. Kolesnikova, *Forest Management on the High Level* (Aug. 1999), Forest Bulletin Issue 11, available at <http://www.forest.ru/rus/bulletin/11/6.html> (last visited Aug. 10, 2006)).
- 271 Fedyayev Memorandum on Russian Forest Research, *supra* note 240 (citing V. Kolesnikova, *Forest Management on the High Level* (Aug. 1999), Forest Bulletin Issue 11, available at <http://www.forest.ru/rus/bulletin/11/6.html> (last visited Aug. 10, 2006)).
- 272 Verkh. Sud RF Ruling of 17 Feb. 1998, available at <http://ecojuris.fatal.ru/RJURIS/vsles1.htm> (last visited Aug. 10, 2006). [The Court cannot agree with a reason of representatives of the Government of the Russian Federation that challenged orders could not entail negative influence on a surrounding environment and that it was not required carrying out of the state ecological examination.]
- 273 *Id.* [A state ecological examination must be carried out in each specific case transferring “first group” forests into non-forested land, taking into account the requirements of the law mentioned above and other circumstances.]
- 274 *Id.* [In none of challenged directions orders did the defendants justify “exclusive” circumstances, or the necessity of transferring such forestlands. Defendant’s representatives did not present any material proving the necessity of such transfer of forested land during this judicial session.]
- 275 Verkh. Sud RF Ruling of 17 Feb. 1998, available at <http://ecojuris.fatal.ru/RJURIS/vsles1.htm> (last visited Aug. 10, 2006). [Considering, that challenged orders of the Government of the Russian Federation are accepted without observance of requirements of the law, they are *void*.]
- 276 Fedyayev Memorandum on Russian Forest Research, *supra* note 240.
- 277 Verkh. Sud RF Presidium Ruling of 23 Sept. 1998, available at http://www.businesspravo.ru/Docum/DocumShow_DocumID_63169.html (last visited Aug. 12, 2006).
- 278 Verkh. Sud RF Ruling of 12 May 1999, available at <http://ecojuris.fatal.ru/RJURIS/vsles3.htm> (last visited Aug. 12, 2006).
- 279 Verkh. Sud (Appeal Chamber) RF Ruling of 8 June 1999, available at http://www.businesspravo.ru/Docum/DocumShow_DocumID_72045.html (last visited Aug. 12, 2006).
- 279A Verkh. Sud RF Ruling of 12 May 1999, available at <http://ecojuris.fatal.ru/RJURIS/vsles3.htm> (last visited Aug. 12, 2006).
- 280 Mischenko & Rosenthal, *supra* note 248, at 421.
- 281 *Id.*
- 282 See *supra* text accompanying notes 97-98.
- 283 Verkh. Sud RF Ruling of 12 May 1999, *supra* note 279A. [The Court considers it necessary to inform of the Government of the Russian Federation these facts establishing that the adoption of decrees

must follow procedure; so that in the future transfer decrees whose realization can negatively be reflected in an environment are executed.]

²⁸⁴ *Id.* [Numerous citizens and organizations have argued that the adoption of decrees without following the appropriate procedures infringes on their right to a favorable environment, as provided for in the Constitution.]

²⁸⁵ *Id.* [Meanwhile, federation legislation stipulates that the population should be informed on construction plans on “first group” forest lands, as the necessity of carrying out of public examination is certain, it is established by law, that the examination must taken into consideration the opinion of the population.]

²⁸⁶ Ernest Partridge, Notes from a Conference: Environment and Human Rights in the Russian Federation, at <http://gadfly.igc.org/russia/report.htm> (last visited Aug. 12, 2006).

²⁸⁷ Agence France-Presse, *Russian Leader Blasts Environmentalists for Holding Back Development* (July 20, 2005), available at <http://www.terradaily.com/news/russia-05x.html> (last visited Aug. 12, 2006).

²⁸⁸ Indeed, it can overthrow authoritarian society, as more than one Eastern Bloc country discovered during the breakup of the Soviet Union. For example, see James Friedberg & Branimir Zaimov, *Politics, Environment and the Rule of Law in Bulgaria*, 4 DUKE J. COMP. & INT'L L. 225, 263 (1994) (“Environmental activism was central to the peaceful Bulgarian revolution that culminated in the ouster of Todor Zhivkov in November 1989. Terrible ecological degradation coalesced with a national desire for change to incubate political rebellion in the relatively protected atmosphere of environmental protest--an atmosphere safer than direct political challenge to the totalitarian regime.”),

²⁸⁹ Memorandum from Lois Kim on Russian Forest Research, to Professor Oliver Houck (July 25, 2006) (on file with the author). List of key federal laws implemented: On environmental protection No. 2060-1 of 1991; On mineral resources No. 2395-1 of 1992; On air protection No. 2353 of 1980; On wildlife No.52 FZ of 1995; On specially protected nature territories No. 33-FZ of 1995; On natural medial resources and health resorts No. 26-FZ of 1995; On environmental examination No. 174-FZ of 1995.

²⁹⁰ Powell, *supra* note 215, at 131 (describing rise and fall of the Ministry of Protection of the Environment and Natural Resources of the Russian Federation)

²⁹¹ *Id.* at 130.

²⁹² George Soros, *Putin's Heavy Hand Could Halt Russia's Rise: Choking Society*, Int'l Herald Trib., June 16, 2004, at 8.

²⁹³ Bernard S. Black & Anna S. Tarassova, *Institutional Reform in Transition: A Case Study of Russia*, 10 SUP. CT. ECON. REV. 211, 218 (2003) (“Russian privatization has been described as ‘the sale of the century.’ In some ways, it was the ‘giveaway of the century.’ A large percentage of the value of Russia's enterprises, especially its natural resources firms, ended up controlled by a handful of well-connected ‘kleptocrats’ or ‘oligarchs’ (we use the term “oligarchs” here). The purchase prices were trivial fractions of enterprise value. Often, the oligarchs and other enterprise managers had stolen much of the purchase price from the government or diverted it from the enterprise.”).

²⁹⁴ Sara Jankiewicz, Comment, *Glasnost and the Growth of Global Organized Crime*, 18 HOUS. J. INT'L L. 215, 232-233 (1995) (describing how “[o]rganized criminals also took advantage of privatization by buying up vast amounts of Russia's natural resources. Because most * Russian citizens had no money, and the Mafia did, it took little time before the crooks controlled everything--an estimated fifty to eighty percent of all Moscow.”)(citations omitted).

²⁹⁵ See Black & Tarassova, *supra* note 295 at 220 (noting that the oligarchs cooperated with managers of privatized enterprises and corrupt government officials to oppose many of the institutional reforms that would have been central to sustained economic growth).

²⁹⁶ Matthew Sullivan, *Putin Power*, HARV. INT'L REV. 10, April 01, 2005, at 1, available at 2005 WLNR 5166518; James M. Goldgeier and Michael McFaul, *What to do About Russia*, POLY'R REV. 45, Oct. 1, 2005, at 1, available at 2005 WLNR 20368960; Powell, *supra* note 215, at 130-131 (“Since 1999 Russia's environmental efforts have been chaotic. Frequent changes in state environmental institutions, unclear relationships among these institutions, their often overlapping responsibilities, and the shifting content of environmental laws have produced a highly unstable and often perplexing setting in which environmentally concerned citizens, advocacy groups, and decision makers must operate One observer has put it, ‘the structure of executive power is in a permanent state of reorganization, disenlargement, and even liquidation of some bodies, which have to be restored again later.’”)

²⁹⁷ Bill Nichols, *Putin's Victory Clear – Russia's Future Cloudy*, USA TODAY, March 15, 2004, at 09A.

²⁹⁸ Mark McDonald, *Russia: Watchers Say Putin Amassing Power – Economic, Democratic Reforms Giving Way to Authoritarian State*, CHARLOTTE OBSERVER (N.C.), January 8, 2005, at 14A.

²⁹⁹ Tom Lantos, *Putting Democracy First in Relations with Russia*, 29-SUM FLETCHER F. WORLD AFF. 13, 13 (describing the “reversals in human rights, the rule of law, and freedom of expression since Putin took power in 2000. The country has eliminated virtually all independent media, clamped down on political opposition, conducted seriously flawed parliamentary and presidential elections, jailed business leaders who were perceived to be hostile to the state, used dubious excuses to nationalize the largest private oil company, and, most recently, eliminated direct elections of regional governors and representatives.”); see also Nichols, *supra* note 297; Sullivan, *supra* note 296; Goldgeier, *supra* note 296.

³⁰⁰ See United States Department of Commerce International Trade Administration, Russia Fact Sheet: 2002 Performance- Initial Year-End Data, available at <http://www.bisnis.doc.gov/bisnis/bisdoc/2002RSFactsheet.htm> (last visited Aug. 10, 2006) (noting that Putin received 62.9 percent of the popular vote on March 15, 2004, winning re-election to another term as President).

³⁰¹ Nichols, *supra* note 297 (“‘I promise you that all democratic gains of our people will without any doubt be upheld and guaranteed,’ Putin said after his victory. ‘We shall strengthen civil society and do everything to uphold media freedom.’”).

³⁰² See discussion on the trans-Siberian pipeline, *infra* note 324.

³⁰³ See Powell, *supra* note 215, at 146-147 (noting that “[m]ost observers, both inside and outside the country, believe that [harassment of NGOs] is occurring not because Russian officials necessarily think that environmental advocates are terrorist bombers or foreign spies but because they ‘see the strengthening of *civil society* as a security threat’ more generally.”)(citing Sarah E. Mendelson, “The Putin Path: Are Human Rights in Retreat?” testimony prepared for hearings before the Commission on Security and Cooperation in Europe, U.S. Congress, 106th Cong., 2d sess., May 23, 2000); Agence France-Presse, *Russian Leader Blasts Environmentalists for Holding Back Development* (Jul. 20, 2005), available at <http://www.terradaily.com/news/russia-05x.html> (last visited Aug. 12, 2006); Josh Wilson, *Selected Reader: “The NGO Question”*, The School of Russian and Asian Studies Newsletter (Nov. 28, 2005), at <http://www.sras.org/news2.phtml?m=486> (last visited Aug. 9, 2006) (Putin says, ‘He who pays the piper calls the tune.’ The Kremlin has criticized the support given by the West to opposition groups in countries like Georgia and the Ukraine, both former Soviet states and recently overthrew Moscow-backed administrations. Before the vote yesterday, Nationalist legislator Alksa Mutrifanif(ph) said even groups like Greenpeace should be put under Governmental Control.”)

³⁰⁴ *Id.*

³⁰⁵ Rory Cox, *Putin Sets Back Ecological Clock* (July 15, 2000), available at <http://www.pacificenvironment.org/article.php?id=199> (last visited Aug. 10, 2005).

³⁰⁶ *Id.*; Soubotin, *supra* note 224.

³⁰⁷ Svitlana Kravchenko, *Citizen Enforcement of Environmental Law in Eastern Europe*, 10 WIDENER L. REV. 475, 482 (2004).

³⁰⁸ *Id.*; Danielle Knight, *World Bank Slammed for Eco-Destruction of Russia*, InterPress Service, Sept. 6, 2006, available at <http://www.commondreams.org/headlines/090600-0.htm> (last visited Aug. 12, 2006) (“Putin’s decree amounts to more than just another restructuring of Russian bureaucracy, according to Dimitry Lisitsyn of Sakhalin Environmental Watch, an advocacy group on Sakhalin Island of the Russian Far East. ‘The abolished committee on environmental protection was one of the major achievements of the democratic movement in Russia following the collapse of the Soviet Union.’ said Lisitsyn.”)

³⁰⁹ Environmental News Service, *Court Asked to Reverse Putin's Purge of Russian Environment, Forest Agencies* (Aug. 22, 2000), available at <http://www.elaw.org/news/partners/text.asp?id=313> (last visited Aug. 10, 2006).

³¹⁰ Russell E. Bowman, Note, *Global Cornerstones for Environmental Recovery in Iraq: A Comparative Law and Policy Analysis of Lessons in Environmental Response and Remediation*, 13 N.Y.U. ENVTL. L.J. 501, 524 (2005)(noting that with the elimination of the State Committee for Environmental Protection, “compliance with environmental standards is largely left up to ‘the consciences of the oil companies themselves.’ As President Putin bluntly stated: ‘Right now, industries are not held responsible for harming the environment.’”)(citations omitted).

³¹¹ For discussion of the referendum, see *Farewell, Referendum*, at <http://www.democracy.ru/english/article.php?id=166> (last visited Aug. 12, 2006); for an overview of the new law see Valdimir Volkov, *New Law on Russian Referendums: Crude Attack on Democratic Rights*, June 8, 2004, at <http://www.wsws.org/articles/2004/jun2004/refer-j08.shtml> (last visited Aug. 11, 2006).

³¹² Memorandum from Lois Kim on Russian Forest Research, *supra* note 289. Brief survey, month by month, of Forest Code legislation from March 1995 through December 2003. See also Erik Hansen & Marina Muran, GAIN Report RS6007, *Russian Federation Solid Wood Products Annual 2006*, at www.fas.usda.gov/gainfiles/200602/146176849.pdf (noting that since 1997, Government Resolutions have amended the Forestry Code eleven times)

³¹³ Tomila Lankina, *Karelians Denounce Federal Forestry Reforms*, Russian Regional Report, Vol. 11, No.5 (Feb. 2006), at <http://se1.isn.ch/serviceengine/FileContent?serviceID=ISFPub&fileid=C6AA6CB9-7D5F-B635-04C7-A811B7076405&lng=en>. (quoting Andrei Goromtsev, senior scholar at the Forest Research Institute of the Karelian Research Center, Russian Academy of Sciences).

³¹⁴ *Id.* (describing how the latest draft code provides for auctions, whereby the sole criterion is the amount of money offered by the highest bidders.)

³¹⁵ Cox, *supra* note 305; Powell, *supra* note 215, at 146 (describing how since Putin's rise to power, "many advocacy groups have reporting being harassed by polic, security, and tax agents, some of whom have been known to barge unannounced into the NGO offices and confiscate files while dressed in ski masks and bearing assault weapons.")

³¹⁶ Paul Raber, *The Green Menace*, Sierra Club Magazine (Nov./Dec. 2000), available at <http://www.sierraclub.org/sierra/200011/lol.asp> (last visited Aug. 12, 2006).

³¹⁷ *Id.* ("His troubles stem from a report he helped write for the Norwegian environmental group Bellona on the threat of radioactivity from Russia's aging fleet of nuclear submarines (a threat underscored by the August sinking of the Kursk in the Barents Sea). Even though Nikitin's work was based on published sources, the FSB charged him with divulging state secrets, a capital crime. After spending ten months in jail and undergoing numerous trials, Nikitin's acquittal by a lower court was confirmed by a three-judge panel of the Supreme Court this April. It was a historic victory, said Nikitin, the first time the KGB/FSB had lost a high-treason trial.")

³¹⁸ The Jamestown Foundation, *Rights Seemingly Under Assault in Russian Spy Trials*, Volume 6, Issue 221 (Nov.28, 2000), available at http://www.jamestown.org/publications_details.php?volume_id=23&&issue_id=1910 (last visited Aug. 12, 2006).

³¹⁹ Igor Kudrik, *Environmental National Vote Banned* (Nov. 29, 2000), available at http://bellona.org/english_import_area/international/russia/nuke_industry/waste_imports/18705 (last visited Aug. 12, 2006) ("The ministry even launched an NGO for this purpose. The NGO named Ecological Forum comprises various officials and is aimed at fighting the greens.")

³²⁰ The groups are known as "BINGOs, as in Business and Industry NGOs, and they are known to engage in a wide variety of "dirty tricks" as well. Soboutin, *supra* note 224. See also Gregory Feifer, NPR (National Public Radio), *Russia Tightens Grip on Non-Governmental Groups*, Nov. 24, 2005 ("Under Putin, the state has taken control over most major media outlets, canceled gubernatorial elections and wrested control of private industries. This week, the government announced it would give selected NGOs over \$17 million. Protestors says the move would enable the Kremlin to create the illusion it's actually fostering civil society. Tatian Lokshina heads Moscow's Demos human rights group. She says the Putin administration has crushed Democratic politics and is not going after what's left.")

³²¹ Rashi Alimov & Igor Kudrik, *NGO Bill Becomes Law* (Jan. 19, 2006), available at http://bellona.org/english_import_area/international/russia/envirorights/info_access/41667 (last visited Aug. 12, 2006); Josh Wilson, *Russian Bills on NGOs to Become Law*, The School of Russian and Asian Studies Newsletter (Dec. 27, 2005), at <http://www.sras.org/news2.phtml?m=480> (last visited Aug. 9, 2006). To be fair, President Putin did relax some of the most extreme provisions of the bill.

³²² Alimov, *supra* note 321.

³²³ The Role of Environmental NGOS, *supra* note 213. See also Ecojuris Website, at <http://webcenter.ru/~ecojuris/epeople.htm> (last visited Aug. 12, 2006); Interview with Vera Mischenko, *supra* note 182.

- ³²⁴ Sakhalin Environment Watch, at <http://www.sakhalin.environment.ru/en/index.php> (last visited Aug. 10, 2006). The description of the Sakhalin pipeline controversy that follows is taken largely from this source.
- ³²⁵ Sabrina Tavernise, *Siberian oil rush makes many nervous*, THE TIMES PICAYUNE, October 5, 2003, at A-36.
- ³²⁶ *Id.*
- ³²⁷ *Far East Seas in Court* (July/Aug. 1999), The Newsletter of Socio-Ecological Union (Socio-Ecological Union, Moscow, Russia), at <http://www.seu.ru/seu-news/eng/soceco06.htm>.
- ³²⁸ *Id.*; see also The Role of Environmental NGOS, *supra* note 213 at 189.
- ³²⁹ The Sakhalin Times, *Two Lawsuits Against Sakhalin-2 in Moscow Courts* (March 26, 2004), at <http://www.thesakhalintimes.com/modules.php?name=News&file=article&sid=602> (last visited Aug. 12, 2005) (“‘Ecojuris’ Ecological Legal Institute and 50 non-governmental organisations filed the second lawsuit. The NGOs are protesting the results of the state ecological expertise report on the Sakhalin-2 project.”).
- ³³⁰ Ristroph, *supra* note 203, at 63-63..
- ³³¹ Powell, *supra* note 215, at 130. (noting that the Soviet government had intentionally suppressed information regarding the 1986 Chernobyl explosion).
- ³³² Ristroph, *supra* note 203, at 64.
- ³³³ *Id.*
- ³³⁴ Environmental News Service, *supra* note 309 (“Ecojuris filed suit Monday asking the high court to declare unconstitutional and invalid a decree issued by President Putin on May 17 eliminating the environmental and forest services. The suit was brought on behalf of organizations including the Socio-Ecological Union, Russia’s largest environmental group, and regional groups from the Far East, Siberia, the Urals and European Russia.”).
- ³³⁵ *Id.*
- ³³⁶ Levin, *supra* note 188, at 483 (noting that the Supreme Court of Russia dismissed the complaint without a court hearing, on the ground that it had no jurisdiction and that the decree did not violate citizens’ rights).
- ³³⁷ *Id.* Ecojuris Institute then went before the European Court of Human Rights (ECHR), asserting that Putin’s decree violated the European Convention on the Protection of Human Rights and Fundamental Freedoms. The ECHR refused to consider the case, finding no violation of human rights under the European Convention and finding it had no jurisdiction to decide the question of legality of the Presidential decree in this instance.
- ³³⁸ Pacific Environment, at <http://www.pacificenvironment.org/article.php?list=type&type=65> (last visited Aug. 10, 2006). The description of the Lake Baikal pipeline controversy that follows is taken largely from this source.
- ³³⁹ *Id.*
- ³⁴⁰ Steven Lee Meyers, *Putin Reverses Decision on Pipeline Path*, N.Y. TIMES, April 26, 2006, available at <http://www.nytimes.com/2006/04/26/world/europe/26cnd-russia.html?ex=1303704000&en=88dd010b836c65dd&ei=5090&partner=rssuserland&emc=rss> (last visited Aug. 12, 2006).
- ³⁴¹ Russian Leader Blasts Environmentalists for Holding Back Development, *supra* note 286 (“Putin gave as an example environmental objections that had caused the re-routing of an oil pipeline that is being built from western Siberia to Russia’s Pacific coast in order to supply Asian markets.”).
- ³⁴² See *Challenging the Draft of the New Forest Code*, available at <http://www.jurix.ru/en/projects/litigation/domestic.htm> (last visited Aug. 12, 2006).
- ³⁴³ The Role of Environmental NGOS, *supra* note 213, at 187.
- ³⁴⁴ *Id.* In addition to participating in the Network of Russian Public Interest Environmental Lawyers from 1997, Ecojuris has established the Eurasian Public Interest Environmental Law Network to work alongside colleagues from Azerbaijan, Moldova, Ukraine, Kazakhstan, Kyrgyztan, and Uzbekistan.
- ³⁴⁵ Interview with Vera Mischenko, *supra* note 182.