BOOK REVIEWS

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BOOK REVIEW ESSAY:

Some Recent English Language Sources for Current Russian Legislation

A spate of works endeavoring to present current legal developments, particularly legislation, of the Russian Federation in English translation now warrants a careful appraisal. Publishing is naturally a market driven activity; the demands of discrete audiences and the need to tailor presentation of certain sources becomes most noticeable in commercial treatments of foreign legal materials. The English speaking market for such works is large and affluent and receives the most attention. When one focuses on the rejuvenated legal systems of Central and Eastern Europe and the newly created states of the former Soviet Union, the requirements of the practicing bar and the international business community are clearly those that the publishing industry is aiming to satisfy. Scholarly research continues on its own momentum and can be relied upon to provide the framework for study, but the international businessman and banker, either investor or joint venturer, along with the legal advisor need immediate assistance and direction through the morass of laws and regulations, complicated by shifting approaches to legal practice and the drafting and application of legislation.

Some valuable guidance can be found in a number of commercially oriented serial publications on Russian law. Several of these will be addressed here. This review is not intended to be exhaustive but is rather designed to point up the more important titles that the writer has found helpful. We shall be concerned with publications that concentrate as broadly as possible on legal developments in the Russian Federation, and provide extensive translations of current legislation, rather than works that expansively cover larger regions such as Eastern Europe or entire subjects world wide.

The scope of this review excludes monographs or static treatments as well as summaries and exegesis. Legal developments in Russia, the largest and most important of the former Soviet republics, are so fast moving and changing as to be at least chimerical if not evanescent. At every point the researcher, even one fluent in Russian, is confused and frustrated by the lack of form, unified
concept or continuity in the legal systems of the various former Soviet republics. Developments in the more sophisticated states of Central and Eastern Europe present a more approachable and understandable target. Here government impetus remains fixed on the goal of free market economies, and legislatures continue to be obsessed with privatization measures. Even Albania has joined Poland, Romania, Hungary, Bulgaria and the Czech and Slovak Republics in charting a path backwards to the framework of bourgeois, if frequently statist, legal systems which operated half a century ago. Regularly one encounters restorations of prewar civil and commercial codes as stopgap efforts, albeit archaic and incompletely responsive, efforts to quickly erect a framework around which to fold the new legal system of private property, market economies supported by the security of investment necessary to attract western money, both from private sources and as international aid.

The nations of Central and Eastern Europe, now joined by the Baltic states, currently present, to an appreciable degree, various pictures of legal development and goals that are reasonably cognizable and coherent. This is not the case with the nationally insecure republics of the former Soviet Union with their frayed economies. Here the overall picture of legislation and regulation, both in its formal policy and its actual application, is acutely dismaying. The Russian Federation, the most advanced and potentially prosperous of the now vanished Commonwealth of Independent States benefits from the “most history” and survives as the accepted successor state of the U.S.S.R. and its all-union approach to a unified legal system, as well as to much of the legislation of the R.S.F.S.R. The clouded situation is exacerbated by internal conflicts between and within the executive and legislative powers. As laws and regulations are altered or redirected with disorganized and unsettling frequency, our focus must be on works geared to respond quickly and efficiently to these changes, bringing them to the user audience in as rapid and comprehensible a fashion as possible.

No single publication could be expected to present, in a single, broad and organized view, all the vast and expanding body of statute law and administrative regulation of the Russian Federation. This review will concentrate on recent publications, all looseleaf in format and all directed at the businessman or practitioner. This is a growing field, new titles are released every month and newsletters - a separate format - are expanding their coverage to compete with the major services. All these attain varying degrees of success. There is one work which because of its scope and organization stands above the others.

As already suggested, the market’s primary concern is with all aspects of commercial, financial, fiscal and trade laws, including commercial and public contracts and privatization. Aspects of procedural law, especially affecting foreign entities through arbitration and whatever body of private interna-
tional law are also addressed, along with information on exploration and exploitation of natural resources. To an important extent new laws on property and ownership must be displayed as well as anything touching on juridical persons. The market is less interested in family and criminal law, although administrative law and procedure loom as attractive. Current practical interest focuses on what would be, or would have been, contained in civil procedure codes. Research in, and the concomitant presentation of translation and exegesis on, Russian law is an expensive process, and this factor mandates an exclusion of a considerable range of legal developments that would be of interest to the scholar.

If this reviewer were to give a preference to a single title among the many competing works, often of similar or overlapping coverage, he would have to fix on Business and Commercial Laws of Russia. This is one of the more recent publications and should strike the user as worthy of attention for a number of reasons. While the publication is a late entry in the field, its editors have no doubt benefited from the deficiencies that only became apparent as competitors struggled to bring order and coherence to various randomly organized series of individual translations. Indeed, the supreme attraction of this work is the masterful structure around which the editors have placed their translations. These are accompanied by pinpointed and relevantly positioned discussions and summaries of all major pieces of legislation. There are also, everywhere throughout the volumes, cross references to related materials in other chapters. One can only conclude that the entire compilation was carefully thought out with an overall plan and view, rather than to have simply “evolved” as seems the case with other works. A second consideration that renders this set the preferred one in this reviewer’s opinion is its comprehensiveness and currency. All the titles considered in this review attempt to blanket a major sector of Russian law; however a careful comparison leads to the conclusion that this is the most comprehensive and certainly among the most up to date in supplementation. Overall, the excellent, concise overviews at the beginning of each chapter and the commentaries accompanying each translation combine with the lucid and approachable organization to render Business and Commercial Laws of Russia outstanding in the field. The commentaries have been written by Russian lawyers in international practice and are designed to explain how the particular laws came about and evolved, as well as their practical effect and application. As a further example, and not a minor consideration, while all the publications have tables of contents and various forms of classified organized listings, this set moves towards a condition of overkill, with detailed tables of contents for each volume running to forty-two pages.

Another multi-volume set has long been the leader, indeed a pathfinder in the field. Russia and the Republics: Legal Materials is a refined spinoff of the publisher’s earlier venture U.S.S.R. Legal Materials which was the first effort at comprehensive translation of Soviet (now “C.I.S.”) commercial and trade oriented legislation. The expertise of the editors, John Newbold Hazard and Vratislaw Pechota assure the quality of the translations and the access to sources. As a vehicle for scholarly translations this work, published under the auspices of the Parker School at Columbia University, is most valuable. A drawback is that, as the first such venture, originally aimed at bringing the law of the seemingly controlled and defined legal system of the U.S.S.R., it has had to revise its approach and expand its coverage to cope with the uncontrolled and ill-defined legislation of a myriad of new states. The work suffers from a lack of overall organization and perhaps even of control of superseded or partially abrogated legislation, and because of this, the occasional summaries and analyses appear random and scattered without a plan. The really great scope of the set, aiming to cover the eleven remaining republics (when a legal system can be discerned at all) as well as Russia, means that its comprehensive treatment of the Russian Federation cannot be as great as that of Business and Commercial Laws. Unlike its sister looseleaf, Central and East European Legal Materials which reprints translations that may be in the public domain or have already appeared in other unrelated publications that many institutions already have on hand (and have paid for), the translations in Russia and the Republics are generally original.

The Parker School supplements, in a sense, its basic volumes on Russia and Eastern Europe with SEEL, a cross between a newsletter and a scholarly reporting service that is issued ten times a year. This is a useful title, combining thoughtful, informative brief articles with current surveys of national legislation - fixing on different jurisdictions - general news on legal developments and occasional translations of legal texts. While not a newsletter (see below) and not intending to be comprehensive, this is a valuable service. The same group has published a separate work on foreign investment which appears to be not so much a spinoff as a republication of material that first appeared in one of the basic collections of “legal materials”.

Another collection of Russian legislation should be mentioned at this point,

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3 SEEL v. 1 (1990) - J.N. Hazard and V. Pechota, General Editors. Irvington-on-Hudson, Transnational Juris, 1990- (volumes 1-2 had the title Soviet and East European Law). In 1994 the publication is being transformed into a journal with lawyer articles as well as notes, published six times a year.

4 Foreign Investment in Central and Eastern Europe Ed. by V. Pechota. Irvington-on-Hudson, Transnational Juris, 1992-.
The Commercial Code of Russia. The title alone is intriguing, since Russia does not have a commercial code, (the nearest thing is the “Land Code” which is now being altered out of recognition), but the idea is a good one. The “adaptive translation” of materials that would technically be in several traditional codifications provides for an organized approach, it places the contents in an understandable contextual setting and the material flows sensibly from the general to the specific. The set is well indexed and easy to use, although, by its own limitations, it is not so comprehensive as the works already cited. For what it aims to accomplish, this is a very useful work and can be recommended of its genre.

The most recent entry is Trade and Commercial Laws of the Russian Federation. This compilation, still in process of publication comes from Oceana, a firm that has long been active in producing translations or summaries of the laws of Eastern European nations, some of which sets have ceased supplementation and so are now relatively useless. The current work is more ambitious appearing under the multiple auspices of the Russian Federation’s Academy of Jurisprudence, Ministry of Justice and the grandly, if insecurely named “Institute of Economic Problems of the Transitional Period” of the Academy of Sciences. The Minister of Justice terms this version an “Official Codification” in a preface.

Oceana’s version is clearly and sensibly arranged, each chapter, containing from one or two up to a dozen laws and concluded by a useful commentary prepared by the “University of Pittsburgh School of Law Faculty”. As with most Oceana products, this is printed in a very large type face with wide margins. It is not, however, complete or comprehensive; perhaps because of its “official” nature and the required vetting of various departments, some of the translations lack current amendments. The translations are concise and encompass the major laws, but clearly not everything. Taken within the context of its perceived goals, this set succeeds in providing the basic framework of legislation for the user concentrating on foreign trade and investment regulation accompanied by translations of good quality and precision. Its presentation of the broad range of “commercial” law is less complete.

An analysis of just these four compilations reveals a rather dismaying state of affairs to the institutional user who seeks completeness. There is no single source! Of the nightmare of laws and regulations affecting banking and

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currency in the Russian Federation, including those still in force from the days of the RSFSR, this reviewer has counted fifteen available in translation in one or another of the four discussed sets. Business and Commercial Laws has eleven, Russia and the Republics seven, Commercial Code of Russia five and Trade and Commercial Laws four. For a simpler example one could look at what currently passes for bankruptcy legislation in Russia. All four sets translate the Presidential edict of June 14, 1992 on restructuring insolvent state enterprises, but only Business and Commercial Laws translates the Russian Federation act of November 19, 1992 on the bankruptcy of (many other) enterprises. Any investigation of the current state of Russian legislation is not for the fainthearted, nor, really, for persons who insist on precision, accuracy and actual currency. One can only seek approximation, along with helpful exegesis, and that is what these four publications accomplish, with varying degrees of success. There are certainly a number of other efforts in the pipeline; although one could justly wonder at the need for further duplication in an already crowded field.  

A final comment should be made about commercial newsletters, an important source for current information and discussion, directing the user towards the latest version, the most recent amendment, a just issued regulation. The regular reader can be rewarded, but it requires a degree of perseverance and diligence to benefit from these. Several of the newsletters, including SEEL, should be included as valuable secondary sources, both for the scholar and, particularly, the businessman and practitioner. The best of the lot is possibly East/West Executive Guide, a monthly, covering legal developments in Eastern Europe and the former U.S.S.R., with a pronounced degree of concentration on Russia. This newsletter, almost a journal, combines updates on legislation and occasional translations of laws with substantive articles written by scholars as well as practitioners, plus the shorter news notes typical of such publications.

As a second choice, or even as an alternative, one might consider either Commerce Clearing House’s Doing Business in Eastern Europe or BNA’s

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7 Business Ventures in Eastern Europe and Russia 2ed. by D.E. Birenbaum. Englewood Cliffs, Prentice-Hall, 1992- has commenced publication with a first volume concentrating on Poland, Hungary, and Czechoslovakia, it has, so far, perhaps wisely ignored Russia.

8 One can only justify newsletters if they are consistently read, otherwise the considerable financial outlay must discourage most users. A new type of newsletter is now emerging, although not necessarily impacting the commercial market. Law of Russia and the NIS: The Bottom Line is issued regularly by Chadbourne and Parke’s Moscow office and concentrates on energy-related developments. Many other firms have begun to issue such useful and informative bulletins, all designed for private circulation.

Eastern Europe Reporter. These are both good, comprehensive reporters. The CCH newsletter is biweekly; the BNA reporter is monthly, both have rather shorter articles, CCH offers perhaps, more extensive subject treatments. BNA has occasional useful translations of laws and regulations. Both newsletters have very good indexes - unusual in this type of publication.

Any comprehensive survey of newsletters on East European and Russian legal matters would probably have to include a half dozen more, from the Executive Guide’s East/West Oil, Gas and Mineral Alert or East/West Business and Finance Alert to the Financial Times’ East European Business Law. For the general user, either practitioner, scholar or institution, the three comprehensive newsletters should suffice, and even here one encounters much information directed to the business manager and investor.

There is, clearly, no end in sight to the ingenuity of the legal publishing industry in its willingness to supply information, translation and exegesis on Russian law and the constantly changing legal environment in the still evolving Russian Federation. At some point the market could become saturated, and at some point needless duplication may become unprofitable. Unfortunately that point has not been reached yet, and it might well be that the limit will never be reached. Until then, this reviewer, like others in large institutions will find utility in the entire range of available compilations and newsletters. First choice is, however, likely to remain assuredly with Business and Commercial Laws of Russia as the most comprehensive and comprehensible of the multi-volume works on current Russian laws in English translation.

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Brief Writing & Oral Argument is the seventh edition produced by the authors. It is a presentation to teach practical legal research and writing methods in these specific areas to conscientious law students. The Manual has had the Recommended Publications for Legal Research (previously AALS) rating of “A” in its other editions; and, one would expect the same rating for this edition.

One of the strengths of the Manual is that it sets up the requirements of effective writing and argument without any apologies: accuracy, brevity, clarity, and elegance in the written and spoken word. A distinction is made