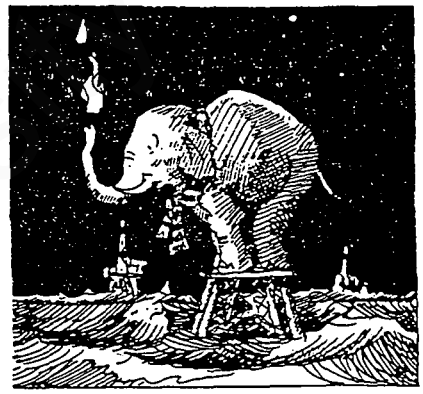
Offshore Oil and Gas in Russia

The Legal Framework and the Implications

As at September 1995



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1. Introduction

The oil and gas industry in Russia is experiencing serious problems in the wake of the disintegration of the Soviet Union and the old structures with no new structures there to replace them. This applies to the whole of the Russian economy, and the way into a market economy with its regimes and structures is a very slow one in view of the political difficulties subsisting, with a general lack of understanding of the workings of a free market economy and democracy. While the free market economy is what is aspired, the use of the word 'free' in this context is often taken by its literal meaning in Russia. The oil and gas industry which is an important employer and above all foreign currency earner, is in the forefront of development.

It is impossible to separate onshore and offshore oil and gas, in that there was a total lack of legislation in the Soviet Union on the oil and gas industry in general. Laws which were introduced were essentially territorial laws attempting to lay down rules and regulations. It is however noteworthy that it is precisely the large offshore projects which have been negotiated for a number of years already or are being negotiated at present, which seem to be a major factor behind the increasing legislative activity in the oil and gas industry, as these are without exception subject to a legal regime for the industry which is acceptable to investors seeking stability rather than a pure maximisation of profits. The attempts in introducing the production sharing legislation are a direct result of these projects as well as proposed legislation on the continental shelf.

Legislation on the subject is a moving target at this point in time and likely to remain so until the political arena has stabilised, which is difficult to envisage taken the present political situation. Set out here is a brief history of the oil and gas industry and the Russian situation in political terms, then a view of the legislation in force and proposed and the offshore projects to which much of the legislative activity is attributable. (As at September 1995)

2. The Situation in Russia and Eastern Europe

The oil and gas industry in Russia (as well as the States as well of Eastern Europe and the States of the former Soviet Union) was organised in a completely different manner as to that in the West as a result of the communist system with its command economies. Underlying was the system of socialist ministries, dictating and setting production targets. The notion of profit and profitability were entirely absent and costs at best a secondary matter. The industry was heavily subsidised and energy prices kept artificially low for the consumers. In terms of world scale this grossly distorted the economy. In 1991 the Russian oil price was circa 70 rubles per ton (the equivalent of 10 US cents per barrel). The price since then has been raised substantially, however, Russian domestic prices are still controlled and at a level well below world prices.

Following Perestroika and Glasnost, there have been drastic changes in the former Soviet Union, politically and economically but the legacy of the old system remains, dictating to a great extent the present economic system as the infra-structure is still that, which was built under the communist system. The attempts at reorganising the Soviet economy following the disintegration has been said to be like 'unscrambling scrambled egg'.[1]

Under the communist system the different branches of the industry were totally inter-dependent, while at the same time extremely specialised as a result of the system of centralised ministries. It has been stated by critics of government policy on oil that the bitter fruit of restructuring are chaos and collapse. Russian production has declined drastically, the levels of domestic supplies however, as well as hard currency exports at world market prices have been maintained. It is the countries of the former Soviet Union, the so called 'near abroad', which have had to bear the brunt of the decline in production. Russia has not been shy of using oil and gas supplies to these countries as a political weapon. This particularly is the case with regard to the Ukraine. It is however a two edged sword for Russia as the main export gas pipeline from Russia to Western Europe runs through the Ukraine. Russia is not in a position to cut the Ukraine off completely despite the Ukraine owing enormous amounts in payments to Russia for oil and gas supplied leaving the industry short of funds, as Russia needs to keep up its exports to Western Europe. The economic and political conflicts arising out of this are obvious.

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1 Professor B.P. Pockney, University of Surrey 1992

3. The Legal Heritage

It is important to appreciate the scale and distances involved in central and more specially Eastern Europe. The former Soviet Union occupies one sixth of the world's land surface. This enormous region was ruled entirely from Moscow by the Communist Party constituting an unofficial parallel government throughout Central and Eastern Europe. While legal forms were maintained, the ultimate authority lay in the Party's Politbureau which had effectively total control. The removal of the Party from power has meant that the methods and structures through which the region, including the former satellite states were governed - cruel and crude, but effective in their own way, on the whole have disappeared often leaving nothing to replace them.

The political and legal mechanisms needed to reconcile disparate interests and resolve disputes in a democratic society were totally undeveloped, arising out of an autocratic system of government in the case of Russia for hundreds of years, leading to a completely different understanding of legality. Since the break-up of the Soviet Union older patterns with deep historical roots are reasserting themselves. Certain of these are based on the historic contours of the great empires that once ruled the area, ie. the German Empire stretching East towards Lithuania and Poland, the Austro-Hungarian Empire covering the Czeck Republic, Slovakia, Rumania, Hungary and large parts of the Ukraine and the Turkish Empire which had formerly covered much of South Eastern Europe. The influences of these Empires had a grave impact on the legal and cultural history of these States.

The countries which lie within the borders of the former Austro-Hungarian and German Empires have relatively strong legal traditions. Poland, the Czeck Republic, the Slovak Republic and Hungary have inherited well established code - based legal systems, originally based on German - Austrian models. They have however their own history and development. Whilst these countries are having problems modernising their laws, the basic legal infrastructure effectively exists. Significant here though is not only the existence and nature of the laws themselves but the attitudes of the population to compliance with the laws. The areas once ruled by the Turkish Empire (Serbia, Bosnia, Macedonia, Albania, Bulgaria and most of Romania) do not have a strong a legal heritage to draw on. After independence from the Sultanate in the 19th and early 20th century (Serbia in 1812, Rumania 1879, Bulgaria 1908 and Albania in 1912), these countries did adopt legal systems that were essentially based on those of continental Western Europe. These systems however never became firmly established. Political instability and frequent wars in the region continued right up to the creation of the communist States after World War II. The Communist iron grip kept the peace and united these peoples.

The harsh control of the people by the communist regime, has in the Balkans created a culture in which respect for the law has never become a tradition. In Russia the inheritance is that of a powerful autocratic state, ruled by the Tsars and subsequently by the Communist Party in an absolutist manner. Respect for the law arose rather out of a sense of fear of official wrath, than experience of reliance on it as a medium for ordering civil and commercial affairs. Arbitrary enforcement of law in autocratic and absolutist mannerisms were employed with the result of creating a police state, causing serious damage to social and legal fabric, resulting in a general suspicion of legal rationalism and serious difficulties in instilling regard for the rule of law. The situation in Russia is changing towards one in which the law is playing a more significant role. The weakening of central government and of the old methods and networks is leading to a greater emphasis on law as a medium for establishing of relationships and resolutions of problems. But at the same time it is leading to disarray and confusion as well as conflicts between the Centre and the Regions in terms of making of laws as well as the enforcement of these. Russia lacks its own historical base for a legal system on which to base new legislation. Under the old Soviet system legislation was often chaotic and above all inaccessible. Today many of the legislative instruments issued from different sources are contradictory, many are not enforced and the problem has been exaggerated in the weakness of the Central Government. Local legislation is becoming increasingly important and often it is difficult to get hold of all the pieces and details of ordinary legislation necessary to get a whole picture of the legislation in force. The oil and gas industry is no exception. Many of the new laws passed are very brief compared to Western standards and often amount to little more than statements of policy while others, intended to be 'framework laws', provide vast amounts of detail. Subordinate legislation necessary to fill the gaps is often lacking, or where such legislation is available it is often ambiguous and contradictory. In practice a system to resolve ambiguities has emerged whereby lawyers in the regions refer questions of law to the relevant Minister asking his advice as to the meaning of the law in question. Such written advice given is relied upon and applied, with the result that a change in attitude or minster adds to the confusion and chaos.

International oil companies have had much experience in dealing with unstable legal environments. Throughout much of the world they have sought to reach agreements with various governments over the state oil companies' concessions and contracts. The production sharing contract is the archetype system in that it provides an investor with guarantees in an unstable political and legal regime, providing for all aspects of regulation and government. The move towards privatisation in Russia and Eastern Europe is making this approach suitable as in the private economy the State is more likely to want to exercise its powers through regulation and taxation. Traditional production sharing implies a mixture of commercial and physical objectives.

The unstable legal environment in Russia is most acutely reflected in the taxation regime. In the Russian oil sector with its controlled prices inevitably leads to abuse in avoidance or evasion of both, price controls and taxation with disastrous results for the Russian Government. The shortage of financial sophistication amongst both management of State and non-State enterprises and those who prepare and apply tax legislation makes it difficult to establish a reliable revenue tax. There are frequent changes in the taxation, each of which is greeted with a new round of complaints from all sides. Because of the difficulties in taxing profits in the Russian industries there is a tendency to tax volumes, particularly in the case of exports. This discourages foreign investors especially as a tax on profits would limit their exposure if the investment was unsuccessful.

Russia has enormous discovered and undiscovered natural reserves but has neither the technology nor the equipment to develop them effectively, and the industry is suffering from a serious shortage of capital. The attitude towards foreign investment in the Russian petroleum is highly ambivalent. This is reflected in deep seated conflicts between the President and the Legislature, the Centre and the Regions and the Ministries and the State and non-State enterprises. The responsibility for the administration of the oil and gas industry is divided at federal level between different ministries. In addition each of the regional and local administrative authorities (which are numerous and often overlap) also claim authority over the natural resources in their respective areas or spheres of influence.

4. A Brief History of Oil and Gas in Russia /the USSR

Oil was utilised in Azerbaijan as early as the 16th Century. In the period 1898 to 1902 Russia was the largest producer of petroleum in the world. The Middle East at that time was merely desert, oil only being discovered there in 1938. Russian oil production reached its peak in 1901 with 11,987m tons of oil. A major role in the development of Russian oil was played by foreigners such as Swedish, French, British and American investors and operators, who had devoted large sums of money in an effort to gain control and increase production. While the Revolution meant a loss for most of them, the following decade was marked by the effort and intrigue of many of the former foreign operators to out manoeuvre the newly empowered Bolshevik rulers in order to regain or repatriate some of their money, which even today is at least part of the suspicion by the Russians as against foreign investors.

Azerbaijan was occupied by the Turks in September 1918 following the Russian Revolution, providing the oil investors with an opening they had been waiting for. With the Bolsheviks distracted by unrest in the North, the British sent an expeditionary force, pushing out the Turks in 1918 with the hope of setting up an independent state of Azerbaijan This was an anti-Bolshevik measure as much as anti-Russian, designed to protect Persia and block Russian access to British India. European and American oil companies were quick to sign contracts with the independent government of Azerbaijan. The Bolsheviks however re- took the area in late April 1920. Finding that having gained physical control over the territory, to operate the oil fields they needed technical and managerial help of foreigners, which accounts for continued Western involvement in the Soviet oil industry.

Under the New Economic Policy (NEP) the Soviet regime began to actively solicit foreign help, with Lenin personally approving measures authorising extended concessions to foreigners. In 1921 the Barnsdall Corporation signed a contract with the Soviet Government, and several foreign companies followed, such as British Petroleum, Societa Minere Italo Belge di Georgia, and in 1925 a Japanese group signed contracts for Sakhalin. With foreign participation production, which had fallen to 3,781m tons, a level not seen since 1889 was restored and rapidly recovered. As output however recovered the Soviets began systematically to revoke the concessions and by 1930 most foreigners had been closed out[2]. Only Standard Oil was allowed to retain its concession at the kerosene refinery built in Batum, until 1935 and the Japanese retained a presence on Sakhalin until 1944.

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2. Anthony C. Sutton, Western Technology & Soviet Economic Development, Volume II, 1930 - 1945 (Stamford: Hoover Institution Press, 1971)

With increasing production administrative control emanating from Moscow was increased, which in the beginning was theoretical rather than actual. Control over the industry was vested in the Supreme Council of the National Economy (VSNKH), set up shortly after the revolution in 1917. The VSNKH derived its powers from the Council of Peoples Commissariats (CPK), the forerunner to the Council of Ministers, which set up the Chief Oil Committee (GNK) under the VSNKH in 1918. Recognising the communication problems between Moscow and the Caucasus, the GNK authorised the creation of three local operating trusts: Azneft controlling the Batum region, Grozneft controlling Grozny and Embaneft in the Emba area. These three trusts formed a commercial syndicate called Neftesyndicat in 1922 (later succeeded by Soyuzneft) to handle exports and other foreign activities. Neftesyndicat proved to be a very aggressive monopoly, making deals with various foreign companies. In 1923 Neftesyndicat joined in a 50/50 partnership with the English company Sale & Co to market oil in the United Kingdom, reserving the right to buy out all Sale & Co's shares within 10 years. This was followed by an agreement with Royal Dutch Shell and an arrangement with Standard Oil of New York, to market oil in the Near and Far East. Other deals included arrangements with British Mexican Petroleum, Pacific Petroleum and Bell Petrole[3].

Neftesyndicat continued to expand, setting up jointly with Arkos 'Russian Oil Products' (ROP) in London, which by 1925 had its own filling station network. In Germany Neftesyndicat set up a filling station network called 'Derop', Deutsche Russische Naphta Co, through its subsidiary and formed other wholesale and filling station subsidiaries in Sweden, Spain, Portugal and Persia. With such a network of supplies Soviet oil exports increased rapidly surpassing the 1926-1927 level, even though production was not increased until two years later. From 1926-1935 Soviet oil exports accounted for 14% of all West European imports, reaching a high of 17% during the USSR's peak export years of 1929-1933.[4] The most important purchaser in terms of physical volume and market share was Italy with Soviet oil accounting for 48% of Italy's total oil imports in the period of 1925-1935. The economic significance is clear, in political terms this shows even more clearly in involving Western oil companies in the development of the oil and gas industry following the Revolution, that politics is no bar trade, with Mussolini becoming prime minister in 1922 and dictator in 1925. Only in 1938 to 1940 did the USSR not sell petroleum to Mussolini's fascist government[5].

Sales to Germany were at a constant level of 400,000 to 500,000 tons until 1936, falling to 350,000 tons in 1936 and 275,000 tons in 1937, dropping to almost nothing in 1938 and 1939. In 1940 however following

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3 R.W. Campbell, the Economics of Soviet Oil and Gas (Baltimore; John Hopkins University Press 1968) page 27)

4 Vneshniaia Torgovlia USSR za 1918-1940 (Moscow: Vneshtorgizdat, 1960)

5 Vneshniaia Torgovlia USSR za 1918-1940 (Moscow: Vneshtorgizdat, 1960)

the signing of Molotow-Ribbentrop Pact exports rose to 650,000 tons, accounting for 50% of all Soviet petroleum exports in that year.[6]

In 1932 the VSNKH was abolished and replaced by the Peoples' Commissariats for the Timber Industry, for the Light Industry and for the Heavy Industry. The GNK was attached to the Peoples' Commissariat for Heavy Industry. This was split into several parts, including the Commissariat for Fuel Industry.[7] In January 1939 and October 1939 the Commissariat for the Fuel Industry was divided into the Peoples' Commissariat for the Coal Industry and the Peoples' Commissariat for the Petroleum Industry. After the War, on 15th March 1946 all Peoples' Commissariats were abolished and turned into ministries. In April 1946 the Ministry for Petroleum Industry was split into two on a geographical basis, one responsible for the Southern and Western regions and the other for the Eastern region, focusing primarily on Sakhalin. In December 1948 the two parts were reconstituted and the Ministry for Petroleum Industry was left intact until Khrushchev's brunt of political and administrative reorganisational activity in 1957. In an attempt to transfer power from Moscow to the regions 110 regional Sovnarkhozy were created. The ministries were abolished and their functions de-centralised. Oil and gas, due to its location was only relevant in a limited number of the Sovnarkhozy. Some of the central functions were held on to by the State Planning Organisation (Gosplan) and various state production committees evolved over time and were subordinated to Gosplan. Khrushchev kept changing Gosplan's own functions as well as the functions and numbers of the Sovnarkhozy with the result that industrial, administrative and planning organisations were in a continuous state of confusion.

Following Khrushchev's removal from office in 1964 the industrial ministry system was restored in 1965. As of 1965 there were state production committees for the fuel industry, the gas industry, for petroleum extraction and petroleum refining, all having come out of the committee for the chemical and petroleum industries. These four committees were ultimately restored into six ministries: for the coal industry, the gas industry, the petroleum extraction industry, the petroleum refining industry, petrochemical industry and the chemical industry. But for the renaming of the Ministry of the Petroleum Extraction Industry as the Ministry of the Petroleum Industry in 1970, this system continued (with the exception of Gosplan which was abolished in 1989) until the coup of 1993, following which further administrative changes were introduced in order to break the strength of the ministry system which in political terms was still extremely powerful.

It is clear that foreign help was important to the Russian petroleum industry prior to the revolution as well as before World War II. This includes technological assistance at all stages (such as drilling, extracting and

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6 Foreign Trade, September 1967 page 17

7 The Enigma of Soviet Petroleum

refining) as well as in the marketing sphere. Justification for foreign help was the periodic fear that resources might run out and that output was being used ineffectively. The fears were expressed prior to the Revolution and continuously recur. This was and still is important, as a result of the need to supply the domestic market, industrial as well as strategic, and the vitally important role of oil and gas as an earner of foreign currency. In 1932 at its peak Russian petroleum accounted for 18% of foreign earnings. The USSR exported more petroleum than the USA and anyone else in the world in that year of the depression. To enable the USSR to make exports of such magnitude, 90% of the production was set aside for export alone, without severely curtailing domestic consumption. At the same time there is a strong fear of letting foreigners in and reaping the benefits of the Russian riches and gaining control. This was a pattern that was set before the Revolution, continued throughout the 70s, and again applies today, with exports continuing to drop while exports remain steady despite the disintegration of the USSR, the loss of a number of oil rich Southern Republics such as Kazakhstan, Amenia and Azerbaijan, with the Russian oil industry successfully re-asserting its position in the world market.

5. The Present Situation of Oil and Gas in Russia

Oil and gas reserves in Russia are huge. Russia however lacks the money to invest in, expand and modernise its energy industries. International oil companies continuously wanting to increase their reserves and are able and willing, even during a world recession, to raise investment capital and invest, provided the terms are acceptable. Russia is looking to attract foreign investment by the major international oil companies in order to revive the ailing Russian oil industry. Russian foreign oil sales generated around $8.5 billion in 1992 and gas exports amounted to about $4 billion. At the same time officials from the Ministry of Fuel & Energy estimated that an investment of $5 billion annually was needed in each of the next 5 years in order to keep oil production at the 1992 level of 8 million barrels per day (bpd).[8]

The need for foreign investment has been recognised and will have to come from the major international oil companies but requires the establishment of a comprehensive legal regime in all spheres of the oil and gas industry which is so far lacking. In the oil and gas industry Russia is still regarded as a 'frontier' by foreign oil companies, however differing to the traditional meaning of 'frontier' in that most of the oil and gas reserves have been discovered by Russia itself without any foreign assistance. The understanding of 'ownership' under the communist system has led to a different sense of ownership regarding energy reserves and a much greater sensitivity regarding their development by foreign entities, which is quite apart from the fact that oil and gas are regarded as an important strategic resource.

It is the general economic situation and the desperate need for foreign investment which has led to development of energy legislation, taking special account of foreign interests. For Russia a major step was made with the 'Law on Foreign Investments in the RSFSR', setting out the framework for foreign investment in Russia. Foreign investors were defined widely, including persons engaged in all forms of income producing activity. The law included a presumption restating the basic premise of all legislation of the former Soviet Union, in stating that all activity was permitted which was not expressly prohibited by legislation.

Under the law foreign investors were able to acquire a right to use land and other natural resources, did however did not give them the right to own it. The law provided guarantees for foreign investors, such as the guarantee that the legal rules relating to foreign investors would not be less favourable than those applying to local enterprises and that nationalisation of foreign investments would only take place " in exceptional circumstances and by decision of the Russian Supreme Soviet", which however was not further defined, but compensation, including loss of earnings and interest was provided if nationalisation did take place. This law

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[8] Petroleum Economist, No. 6 1993

covers all foreign investment and activities in Russia and was not geared specifically for the oil and gas industry with the result that issues which are specific to the oil and gas industry were not addressed. While the Law allowed foreign investment, it was much criticised and where investment did take place, this was only to a small degree.

The Law on Underground Resources[9] sets out a framework for the regulation of all activities involving natural resources, including exploration, exploitation and production. This Law addressed one of the major problem areas in that it determined the political divisions of jurisdiction over natural resources among the federal, autonomous, regional and local government structures. The federal government has the dominant role, with administrative responsibility given to the State Committee on Geology & Natural Resources (Roskomnedra) with the responsibility for ensuring compliance with the law, providing licences and developing programmes for the extraction of resources. Proceeds of fees and royalties were to be shared amongst levels of government authorities. Local authorities retained an advisory role and the right to negotiations with the federal government on quotas. Local authorities were given responsibility to determine and regulate the local impact of activities and to impose restrictions on development. Notably under the law Article 52 states that where the law contradicts the provisions of an international treaty, the terms of the treaty will prevail.

Against the background of slowing economic reforms in the worsening economic situation Yegor Gaidar the Economics Minister and the Minister of Finance, Boris Fyodorov resigned in late 1993. In December 1993 two decrees by Boris Yeltsin were aimed to attract foreign investments. Under the new Russian constitution presidential decrees take precedence over parliamentary law in cases where there is conflict between the government and the legislature but would be subject to a possible constitutional challenge. The first Edict No. 2273 of 23rd December exempted foreign joint enterprises from payment of export taxes on their own production.

The Russian fiscal system in particular deterred any foreign investment within the tax system also requiring reform throughout. The second decree No.2285 of 24th December[10] allowed production sharing agreements. By entering into production sharing agreements companies can escape the ever increasing forms of taxes (there are up to 49 different taxes), which did much to undermine the joint venture system. Under the decree all taxes, with the exception of income tax and charges for use of the sub soil, are to be substituted by the State receiving a share of the oil or gas output. The taxes payable are to be paid in cash or in kind. The

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9 Russian & Commonwealth Business Law Report, 4th May 1992

10 See Chapter 13, p. 59

decree also provides investors with a safeguard promising that if changes in Russian law impact negatively on their commercial activities, the production sharing agreements will be amended to allow for compensation reflected in the distribution of the share in the oil or gas. The decree legalised production sharing for the first time in Russia but very few if any companies would consider any major investment on the basis of a presidential edict in view of the possibility of a constitutional challenge[11], with the industry waiting for legislation implementing a legal regime on oil and gas.

11 Petroleum Economist, (London) No. 7 July 1994

6. Production Arrangements

In the international oil industry production arrangements currently applied fall into two broad categories:

1. Concessions

Under these the host country plays no active role but regulates the nature of the use of the natural resources. The host country receives taxes and royalty payments, which in the Russian context is in non-convertible Roubles, these payments being made by the licensee in exchange for mineral grants and exclusive rights to explore and exploit a designated area.

2. Contracts

Production Sharing Contracts are seen as the most appropriate arrangement for Russia during the period of transition from the centrally planned to a free market economy. Under the production sharing contract the host country does not invest any capital but receives a portion of the produced oil and gas after the operator has been compensated for his expenditure. This allows participation on an equity basis, maximisation of oil production and enhanced transfer of technology. The contractor is not granted mineral rights which in the Russian situation avoids the question of ownership of the subsoil, but is given a right in a share of the production as compensation for carrying out operations.

Risk Service Contracts cover the situation where a number of operators distribute the risks equitably among the partners in a project. Given Russia's precarious financial situation this form of production arrangement appears impossible.

Service Contracts are based on a purely contractual relationship under which a contractor carries out certain works or services for a specified payment. There is no share in the production, with all risks as to whether a project is successful or not resting with the operator and no risk with the contractor who will receive payment irrespectively of the success or failure of a venture.

7. LEGISLATION

7.1 Production Sharing Legislation

The Central issue of the offshore development of natural resources in Russia is the implementation of legislation on production sharing. All the major projects without exception have been agreed and signed, or are being negotiated subject to such legislation. The objective of the legislation is to develop a legislative system that encourages private investment in the areas of exploration, development and transportation of oil and gas. The legislation is to provide a clear procedure for delegation of the rights to explore for and exploit for petroleum resources, the granting of the rights under a commercial agreement between the State and an investor, a clear separation of administrative and civil law procedures whereby the production sharing agreement gives rights to resources, as specified in the agreement. The terms of the production sharing agreement are to prevail over otherwise applicable laws and a licence should not required when the production sharing agreement is executed.

Further it is to provide stability of the contract conditions and terms, including such provisions as requiring the investor to be kept economically whole in the event of any subsequent legal modifications that would have an adverse economic effect on the investment, thereby providing investors with a guaranteed and above all stable regime for the duration of the production sharing agreement. The taxation and accounting regime is to be specified in the production sharing agreement with corresponding revisions to be made to existing tax laws. The investor would have the right of assignment and mortgage under the agreement, consistent with international practice, provided that an assignee has the technological and financial capability. The termination of the production sharing agreement by the State will be possible if the contractor committed a material breach of the contract and failed to remedy such breach after notice, with termination subject to review in international arbitration. There is to be no restriction upon currency transactions and banking operations other than provided in the agreement. All disputes arising under the production sharing agreement are to be subject to international arbitration conducted in accordance with international rules.

The draft Law on Production Sharing was first put on Parliament's agenda in 1991, but due to political upheavals and strong opposition any substantive results on the matter were only achieved in 1995.

Production sharing agreements were for the first time legalised in Russia by the presidential decree by Boris Yeltsin on December 24th 1993 (Number 2285). Production sharing agreements were however not implemented following the decree, as the presidential edict could at any moment become object of a constitutional challenge in view of the contradictions to existing legislation.

The draft Law on Production Sharing was passed by the Russian State Duma (the Lower House of Parliament) in its first reading on the 24th February 1995[12]. At that stage a parallel so-called 'Presidential version' of the bill 'On Production Sharing Agreements for the Use of Underground Resources' was turned down by the Duma. By passing the draft Law on Production Sharing in its first reading the Russian Parliament essentially approved the system of production sharing agreements in Russia.

The draft law provides under Article 1.4 that in cases where laws of the Russian Federation set rules differing from those contained in the production sharing law, the rules of the production sharing law shall prevail in the sphere of regulation of relations as between the parties to the production sharing agreement, related to the conclusion, implementation and termination of production sharing agreements.

Under article 4.2 a subsoil plot is to be granted for the use as set out in agreement and certified by a licence which is to be to be issued for the entire duration of the agreement and subject to extension or re-registration in accordance with the terms and conditions set out in the agreement.

Under Article 9 the mineral raw materials owned by the investor under the agreement may be exported from the Russian customs territory in accordance with the procedure and terms specified in the agreement, in compliance with the legislation of the Russian Federation, without any quantitive limitations on export such as quotas and licenses and without obligatory requirements to sell such raw materials through specific commercial or non-profit organisations. This implies that the export market is to be completely deregulated which is difficult to envisage in view of the strategic nature of hydrocarbons.

Under Article 12 the investor is provided with the right of free access to the pipeline system on a contractual basis. In view of the intended privatisation in the sphere of the oil and gas industry which is slowly progressing, it is not clear on what legal basis the State can contract with an investor, guaranteeing the use of pipelines which at some point will belong to private companies.

Under Article 13 the investor is exempt from taxes, charges, duties, including customs duties, excises and other obligatory payments with the exception of the profit tax and payments for the use of the sub-soil, as set out in the agreement. The draft law provides that in the event that legislative acts of the Russian Federation territory units (ie. the regional authorities) do not exempt the investor from the payment of taxes, duties and other payments to the budget of the regional authority and local budgets, part of the profit production which is the investors share under the agreement is to be increased at the expense of a

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12 Oil and Gas Report, No. 9 (164) 1.3.95

corresponding reduction of the State's share by an amount equal to the charge in taxes, duties and payments actually paid. This article does virtually contradict itself in that investors are still subject to regional legislation on taxes and payments, even though the investor is to be reimbursed such payments. It also provides the regional authorities with a strong hand, which in view of the general struggle for power and control as between the centre and the regions can only complicate at least the financial environment in which the investor is operating.

Under Article 16 the investor is provided with a right to transfer his rights and obligations under the agreement completely or partially to any legal entity that is not affiliated or to any individual person with the consent of the State, provided that such an entity has sufficient financial and technical resources and managerial expertise necessary to perform the operations under the agreement and no unsubstantiated refusal by the State to grant such consent shall be permitted. It is not clear to what extent and in what manner liabilities are to be divided concerning such matters as abandonment and or environmental damage. This is in particular is a major issue in situations where operators take over in places where Soviet (as opposed to Russian) operations have taken place, with the communist industry having had very little regard for the environment. While it would seem logical that the State will carry liability for such matters, this may not be the case in the Russian system.

The above provisions clearly show the potential for conflict, inasmuch as certain measures are very far reaching, such as limiting the State's sovereignty and binding the State for the duration of the agreement, as well as straining the relationship between the centre and the regions. By reducing the regional authorities' influence on offshore development projects as is the case under the draft Law on the Continental Shelf, while giving these a strong hand under the Law on Production Sharing a potentially explosive climate is created in which the regional authority is capable of causing production sharing agreements to be virtually useless. Offshore operations require the creation of a complex infrastructure and requires by definition close cooperation with the local governments. The draft Law on Production Sharing sets out to mitigate the impact of the proposals under the Continental Shelf legislation, specifying that licence provisions authorising offshore field operations are to contain additional clauses calling for investment in the industrial and social development of coastal areas and for equipment purchases from Russian enterprises, but may lead to the regional authorities to stop or severely hinder projects as a weapon, should they feel the need to make a point in a power struggle as against the centre in whatever sphere.

Notwithstanding, the draft bill was approved on 14th June 1995 after long debates, taking the second and third readings of the bill at one stage. The vote of 226 deputies voting in favour was the exact minimum required, showing the strong opposition in the lower house alone. The bill still requires passing by the

Russian Federation Council (the upper chamber) and signature by President Boris Yeltsin. According to a report by the Moscow News (2-9th November 1995) final passage of the law had still not taken place.

7.2 The Draft Law on Oil and Gas

Under the Decree of the Government of the Russian Federation (number 1648, 1992) an inter-departmental commission was appointed to prepare a draft 'Law on Oil and Gas'. This was done in direct competition with a joint parliamentary commission which was sponsored by two committees of the Supreme Soviet, themselves setting about to draft legislation on oil and gas. By the end of 1992 the inter departmental commission had supplanted the joint parliamentary commission. Many of the members of the joint parliamentary commission had served on the Russian petroleum legislative task force involved in a project co-ordinated by the University of Houston, which was started in 1991 and designed to recommend a new petroleum law based on international practices in the oil and gas industry. The stewardship of the project was transferred to the World Bank in mid 1992 but shortly after, the Russian petroleum task force was disbanded and the project came to an end without success. Russian drafting committees were instructed to develop the legislation in accordance with generally accepted international practices (as was the purpose of the University of Houston project). However, the committees appear to have continued to focus more on creating devices to protect the national resources from being taken over by foreign interests rather than creating a legal regime for oil and gas in accordance with international practices.

The draft Law on Oil and Gas passed its first reading in June 1994, however, in late June 1995 the Duma voted to abandon all further discussions on the draft law.

7.3 The Law on Concessions

A draft of a Soviet National Concessions law was being developed even before the 1991 coup. Two alternative versions had been drafted entitled "On the Procedure for Granting Concessions to Foreign Countries and Companies" and secondly, on "Foreign Concessions in the USSR". Both drafts limited foreign investment in major projects to the 'concession formula' (ie. only one of the several possible production arrangements normally available to international business, even though 'concessions' were already at that time no longer regarded as the most suitable arrangement for Russia to use in hosting foreign investors[13]. It was expected at the time, however, that new drafts would legitimise the other formulae as well as concessions. The drafting of bills for Production Sharing Agreements as well as the Presidential Decree number 2285 on Production Sharing have proven this to be so.

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[13] Petroleum Economist, No. 4 April 1992

The Law on Concessions was intended to be a 'framework law' stipulating rights and obligations of an investor who entered into a contract with the State for the long term use of an object owned by the State. Laws in existence so far in the sphere of subsoil-use based on public law with relations as between the Russian Government and an investor based on administrative acts of the State and regulations made thereunder with any agreements subject to such terms and conditions as set out these.

The bill was designed to put the relationship between the parties in the context of the use of the subsoil in the sphere of civil legal relations, developing and expanding the principles set out in the Civil Code of the Russian Federation. Under present laws on concessions and joint ventures the State does not participate. As between the parties in the joint venture the civil code applies while the initial awarding of the right to use the subsoil, which is State property still remains subject entirely to administrative procedures. Termination of an agreement by the State was effective without any possibility of an appeal. The draft Law on Concessions was to encompass the principle issues providing a non-state investor the temporary right to use State property and putting relations on an entirely civil law footing. The draft Law on Production Sharing is closely related and there were some moves to consider both bills as a single legislative package adopting a common approach. On suggestion of the Committee on Industry however, the bills were considered separately with the result of duplication of numerous provisions in the various laws, as well as numerous contradictions.

7.4 The Law on Foreign Investment

In the absence of any mining laws foreign investors were initially guided by the Law on Foreign Investments dating back to 1989, which is an umbrella type legislation setting out general guidelines for foreign investment on Russian territory.

Article 3 provides that foreign investment in the energy and mining sectors can be made through participation in joint ventures with former Soviet legal entities as partners, enterprises wholly owned by foreign investors, and that acquisitions of rights to use land and other natural resources and other investment arrangements were allowed subject to applicable legislation, which did however not exist.

Article 20 provides that industries open to foreign investors are subject to special permits and licences with references to special lists, however, such lists of industries were never drawn up.

Article 40 provides for the possibility of acquiring rights to use land or mineral resources, but contains references to Russian concession laws that do not exist. Further, there is no direct legislation allowing enterprises to be wholly owned by foreign investors. Any activities carried out so far by foreign investors have therefore been through the joint venture system.

7.5 The Law on Underground Resources

The Law on Underground Resources sets out the framework for regulation of all activities involving natural resources, including exploration, production, use and handling of natural resources[14]. The Law on Underground Resources was approved by parliament and signed by President Boris Yeltsin in August 1992. Since then it has undergone in excess of 40 amendments. Initially, the law established system of licensing the use of sub-surface natural resources, designed as an umbrella law, listing general principles applicable to all categories of natural resources. The Law however lacks sufficient detail regarding the licensing system and rights and obligations of investors.

The law determines the political division of jurisdiction over natural resources among federal, autonomous, regional and local government structures. The Federal Government plays the dominant role with the administrative responsibility given to the State Committee on Geology and Natural Resources (Roskomnedra) with the Committee being responsible for ensuring compliance with the law, providing licences and developing programmes for extraction of resources.

Proceeds of fees and royalties are set out to be shared among the levels of government authorities which is intended to minimise difficulties in reconciling vested interests at different levels of authority. The local authorities retain an advisory role and rights of negotiations with the Federal Government on quotas and are given responsibility to determine and regulate the local impact of activities as well as to impose restrictions on development.

Articles 13 and 17 provide for licensing of rights to explore for and produce hydrocarbons through competitive bidding at auctions and tenders but prohibits the issuing of licences through direct negotiations. The intention behind this was to minimise corruption on issuing licences and whereas in political terms it may well be warranted, in practical terms this restricts possible investments. Complex development operations

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[14] Russian and Commonwealth Business Law Report, 1992, 4th May 1987

in remote locations make direct negotiations absolutely necessary in order to reach mutually beneficial agreements. Under the system so far established, the investor has no subsequent guarantees that a licence would be granted.

Article 12 refers to the use of concessions, production sharing agreements and service contracts but does not provide a definition or description of these, nor are any details of any terms and conditions which are to be included in such agreements provided. Under one of the recent amendments Roskomendra confirmed instructions for the re-registration of licences for the right to use underground resources and drew up new procedures under which licences will have to be registered anew, if the rights to use the underground resources are transferred to another user due to changes in the legal form of enterprises, acquisitions or mergers with other enterprises. The same applies where the prior licence holder owns at least one half of the new enterprise, division, or if an enterprise changes its name, even if the enterprise continues to operate under the licence .

While this is in line with the idea of the signing over of rights obtained under a licence, it is not clear whether the licence is the main instrument providing the right for use of the subsoil or whether this could be derived from a production sharing agreement, as set out under the draft Law on Production Sharing, which envisages the licence to be a secondary matter, merely confirming the rights set out in the agreement, the right to assign most likely provided for among these. While this is perfectly feasible under the draft Law on Production Sharing this appears to be contrary to the status given to the licence under other legislation.

8. THE CONTINENTAL SHELF

At present Russia has no comprehensive legal regime governing commercial activities on the Continental Shelf. The Decree of the USSR Supreme Soviet Presidium of February 1968 "On the Continental Shelf of the USSR" is the only legislative measure on the subject and is recognised as grossly inadequate in ensuring Russia's jurisdiction on the Continental Shelf and above all governing business activities on the Continental Shelf.

The "Law on Underground Resources" barely touches on the subject of off-shore development. Article 1 states that "utilisation of underground resources on the Continental Shelf of the Russian Federation shall be carried out in accordance with Federal legislative Acts on the Continental Shelf and the norms of international law." While legal experts consider this clause extremely important, as it indicates that the Continental Shelf legislation, rather than the Law on Underground Resources is intended to regulate the activities of sub-soil uses in the off-shore area. Until such time however that such legislation is actually in place this is of no relevance. As can be seen from the draft Law on the Continental Shelf which appears to set out a comprehensive legal regime governing the extent of, the uses and the protection of the continental shelf, numerous references to other laws and regulations which to the greater extent are yet due to be passed, render the draft law as it stands at best an expression of intent. The draft law is in some instances extremely detailed while in others so broad to render it positively ineffective.

8.1 The Draft Law on the Continental Shelf

The draft law on the Continental Shelf was passed in its first reading shortly after initial approval was given to the draft Law on Production Sharing by the State Duma. The draft law however includes a number of direct contradictions to the Law on Underground Resources as well as the Law on Production Sharing and effectively negates benefits and guarantees provided for by the production sharing legislation. This is the more so the case as it supersedes the production sharing legislation in areas involving the Continental Shelf and would again significantly limit the opportunities of foreign as well as domestic investors.

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The Continental Shelf is defined in Article 1 and includes the sea bottom and the sub-surface of underwater areas stretching beyond the limits of the territorial sea of the Russian Federation along the entire extension

of its land territory up to the outer boundary of the underwater continental margin. The underwater continental margin is set out as the extension of the continental mass of the Russian Federation including the sub-surface and the sub-soil of the Continental Shelf, the slope and the foot and the definition applies to all the islands of the Russian Federation.

The boundaries are set out in Article 2 with the inner boundaries of the Continental Shelf being the outer boundary of the territorial sea, and the outer boundary of the Continental Shelf being at a distance of 200 nautical miles from the low water mark (base lines) from which the width of the territorial sea is measured, provided that the outer boundary of the underwater continental margin does not extend to a distance of more than 200 nautical miles, and in all cases, where the underwater continental margin extends to a distance in excess of 200 nautical miles, the outer boundary of the Continental Shelf is to be not further than 350 nautical miles from the said base lines or not further than 100 nautical miles from the 2,500 metre isobar.

While this is in line with Article 76 of the UN Law of the Sea Convention 1982 (LOSC), there is no provision relating to the exact outer delimitation of the Continental Shelf where it extends to 200 nautical miles (Article 76.4 LOSC) nor is there any reference to delineation of the outer limits by straight lines not exceeding 60 nautical miles in length connecting fixed points as provided in Article 76.7 LOSC.

Article 3 on the delimitation of the Continental Shelf states that delimitation with opposite and adjacent states shall be concluded on the basis of international treaties of the Russian Federation or the norms of international law, which while not expressly, at least impliedly refers to Article 83 LOSC making this Article applicable.

Article 3 paragraph 2 states that "the lines of the outer boundaries of the Continental Shelf and delineation lines or the subsisting lists of geographical co-ordinates of points specifying major initial geographical data stipulated by international treaties of the Russian Federation or approved by the Government of the Russian Federation, shall be depicted on the maps of established scale or published in the "Notices to Mariners" with copies of such maps and lists of geographical co-ordinates indicating the outer boundary of the Continental Shelf to be submitted for custody of the Secretary General of the United Nations Organisation and presented to the Secretary General of the International Body for the Seabed. The data on boundaries of the Continental Shelf beyond 200 nautical miles measured from the base lines from which the territorial sea is measured shall be submitted to the International Commission of Boundaries of the Continental Shelf." While these provisions would seem more aptly located under Article 2, it is noteworthy that prima facie compliance with Article 76.9 LOSC is given, without however any reference to the possibility of recommendations by the Commission on the limits of the Continental Shelf.

Under Article 4 paragraph 1 it is laid out that any resources, living and mineral of the Continental Shelf (seabed and sub-soil) as well as activities relating to prospecting for development and protection of such resources shall be within the competence of the Government of the Russian Federation (thereby excluding any authority of the Regional Authorities of the Federation on the Continental Shelf). Under Article 4 paragraph 4 programmes and plans for prospecting for, exploration and exploitation of mineral and living resources of the Continental Shelf as well as federal ecological programmes concerning the protection and preservation of the marine environment, mineral and living resources are to be approved by the Government of the Russian Federation. Under paragraph 5 the right to dispose of mineral and living resources of the Continental Shelf is vested exclusively in the Government of the Russian Federation.

Article 3 sets out the rights and obligations of the Russian Federation regarding the Continental Shelf; exercising sovereign rights for the purposes of exploration and development of its natural resources, jurisdiction in respect of the creation and use of artificial islands, installations and facilities and protection and preservation of the maritime environment in connection with the exploration and development of such natural resources and an exclusive right in respect to the execution of the drilling operations for any purposes, while explicit consent is required of the Government of the Federation for anyone else conducting such activities. The Article goes on stating that the Russian Federation may declare individual areas of the Continental Shelf closed for activities by foreign States, Russian or foreign legal entities or natural persons as well as competent international organisations of marine scientific research, in connection with the exploration and development of natural resources of the Continental Shelf. It is not clear what point is attempted to be made by this, as the rights of the Russian Federation regarding the resources are exclusive as is the right to grant licences for the use of the Continental Shelf by other entities which are required under all the legal acts regarding mineral and living resources. The Article further states that the rights of the Russian Federation do not affect the legal status of the waters covering the Continental Shelf, nor are shipping and other rights and freedoms of other States to be disturbed, nor unjustified obstacles created which reflects the provisions of LOSC.

Article 4 states that the Russian Federation while exercising its sovereign rights and jurisdiction on the Continental Shelf may determine strategy of study and development of mineral resources, is to establish procedures, exercise control and register operations, establish payment systems and impose restrictions regarding all uses of the Continental Shelf.

Under Chapter 2 the law on the Continental Shelf sets out requirements regarding the interests of regional coastal authorities, requiring any exploration and development of mineral resources on the Continental Shelf to be performed with "due regard" to the economic interests of the coastal region. This includes requirements

for payments for the use of ports, land, buildings, structures, means of transportation and other infrastructure facilities, which is to be established in agreements between the users of plots of the Continental Shelf and the bodies of the executive power of the regional authorities. Agreement is required upon volumes of investment into the development of the production and social structure of the coastal territory as a pre-requisite for obtaining a licence for prospecting for, exploration and exploitation of mineral resources. The problems arising out of this are obvious and particularly in a situation where a number of parties are interested in development of off-shore plots, with each and every one have to negotiate and agree with the regional authorities prior to an application for a licence. The requirement of such agreement as a pre-requisite provides the regional authority with great influence in the selection of bidders and can cause serious delay and confusion, as was the case in the award of the Sakhalin tender. The reference to the licence here is in contradiction to the Production Sharing Law, under which the licence is merely confirmatory, as mentioned above.

Article 6 requires that the permission of Roskomnedra is required in the form of a licence. The Article further requires agreement with the federal bodies of defence, fishery, protection of the environment and natural resources, and the notification of federal bodies for border guard services, science and technological policy, customs control, hydrometeorology and environmental monitoring which are specifically authorised for this purpose.

Such a licence granted is provided for as the document certifying the right of its holder, providing terms and conditions and providing that the provisions of the Law on the Continental Shelf, other federal laws relating to the Continental Shelf and activities thereon as well as international treaties of the Russian Federation are to be observed. Again, the right of the licence holder under the Law on Production Sharing is set out as certified in the actual agreement with the licence granted subsequent to the conclusion of the agreement, merely confirming the holder's rights.

An important qualification is provided for by paragraph 9 in Article 7 stating that in the interests of national security on the basis of a statement presented by a federal body of defence, ("specifically authorised for this purpose"), certain restrictions may be introduced concerning participation of foreign applicants in bid contests or auctions for activities on the Continental Shelf. 'Certain restrictions' are not further defined. However it would appear to include the possibility of a total exclusion of a foreign participant which may as a result cause a bid to fail completely after all necessary negotiations have taken place and agreements reached. In view of the Law on Production Sharing the subsequent licence may thus impose terms not envisaged by the agreement and a party may be in breach of provisions under the licence while acting in accordance with the production sharing agreement.

Article 18 specifies that plots shall be granted by holding bid contests or auctions, the procedure to be established by the Government of the Russian Federation, provided that a positive conclusion is given by Roskomnedra, with participation of a federal body for the protection of the environment and natural resources, ("specially authorised for this purpose") as well as other interested federal bodies of the executive power. This is again contrary to PSA legislative intentions which would have allowed negotiations directly between the foreign or domestic investor with a regional authority with subsequent consent by the Russian Federation Government required.

The procedure for issuing licences is set out in Article 9, repeating previous provisions but adding that the licence may contain "additional terms and conditions" which again is not further explained. The required contents of the licence are set out in Article 10 under which the reference to additional terms and conditions would have been more aptly placed.

Article 11 states that the rights and obligations of the users of plots entitle the user to use the proceeds of the activities including extracted mineral raw materials, which under the licence and federal laws are transferred to the user's ownership. This Article again conflicts with the provisions of PSA legislation in that the ownership would be transferred under the production sharing agreement, confirmed by the licence to such share as set out in the production sharing agreement, which would only be a portion of the proceeds of the activities. Paragraph 2 of Article 11 prohibits the transfer of a right to use a plot on the Continental Shelf to a third party outright. As a result of this provision it would appear that a licence holder can only get out of the rights and obligations under the licence by termination of the licence and the production sharing or other agreement. The plot would subsequently have to be subject to a further auction or tendering process.

Under Article 11 paragraph 3 foreign natural persons and legal entities who have obtained a licence for exploration and development of mineral resources on the Shelf, are obliged (a) to carry out exploration and development of mineral resources only in the presence and under the supervision of an official representative of the bodies for protection of the Continental Shelf and (b) to ensure free-of-charge travel for official representatives of the bodies for protection of the Continental Shelf resources to the place of activity and back to where they have come from, enable them the use of radio communication and to bear all expenses incurred for room and board and all supplies are to be on a basis equal to that of their own managerial (top executive) staff. This is a curious provision to be found in an instrument of legislation, where under the guise of protecting national interests, foreign investors are required to pay each inspector at least as much as the top executive of the foreign company's representative office. Whereas the amount will vary from company to company, it is certain to exceed the normal salary of a Russian official substantially. The provision requires the inspector to be present at the 'carrying out' of exploration and development, which would mean that in his

absence all activity has to stop, production coming to a total standstill. As a result this could lead to failure to develop the prescribed volumes on behalf of the operator and would result in the licence rendered irrevocable under the provisions of Article 12. It also appears to literally invite corruption, contradicting the spirit in which the allotment of plots is required to be by tender only and not in direct negotiations

The definition of inspector is rather broad and includes representatives of the Border Service, Roskomnedra, the State Mining Inspection Agency, Environmental Protection Agencies and 'those agencies in charge of protection of natural resources'.

Article 12 provides for the termination of the right by the expiry as set out in the licence but provides for earlier termination, suspension or restriction by Roskomnedra in circumstances specified in this Article. Under paragraph 2.4 Article 12 provides that the licence holder may waive the right to use the plot on the Continental Shelf with Article 13 requiring the user to notify a body ('specially authorised for this purpose') by the Government of the Russian Federation in writing which shall not exempt him from fulfilment of obligations specified in the licence until a final decision is made.

Article 14 headed 'Anti Monopoly Requirements,' gives the Government of the Russian Federation a broad power to prohibit or declare acts of the federal bodies of executive power and of any users of plots of the Continental Shelf as illegal. The Article fails to specify what these acts may be and would thus include acts perfectly legitimate under the agreement or licence granted.

Article 15 sets out at length the payments required during exploration and development of underground natural resources on the Continental Shelf, requiring that payments are to be made in compliance with the provisions of Section 7, which to a great extent duplicates the provisions in Article 15.

Chapter 4 is headed "Creation of Artificial Facilities and Laying of Underwater Cables and Pipelines on the Continental Shelf of the Russian Federation" and covers the preliminaries i.e. application for creation of artificial islands installations and facilities, the contents of such applications (Article 25) the procedure for submission and consideration of applications (Article 26) as well as the operation of artificial islands installations and facilities. Article 28 states "constructors of artificial islands installations and facilities shall have the right to operate and use artificial islands installations and facilities in compliance with the issued permit' which presupposes that the constructor is also the operator. Under Article 24 jurisdiction over the creation, operation and use of artificial islands, installations and facilities is vested in the Russian Federation amounting to an extension of national legislation beyond the limits of the territorial sea up to the limits of the Continental Shelf as defined in Article 1.

In accordance with LOSC the artificial islands installations and facilities are specified as not having the status of islands i.e. not having their own territorial waters or affecting the termination of the limits of the Territorial Sea, the Exclusive Economic Zone or the Continental Shelf. Also in accordance with LOSC, security zones are provided for within the limits specified by LOSC unless 'otherwise established by generally accepted international standards and recommended by competent international organisations'.

The determination of measures for ensuring the security of both navigation and the artificial islands installations and facilities is curiously vested in a federal body for defence ('specially authorised for this purpose') in agreement with a federal body for border guard service ('specially authorised for this purpose'), reflecting the strategic importance of the offshore areas, which appears justified in certain circumstances, not however in such general terms.

It is further set out that the federal body for defence ('specially authorised for this purpose') is to be informed of the creation of artificial islands installations and facilities and on establishment of security zones around them and the same federal body for defence is empowered to determine proper measures to ensure security and navigation in the security zones. From this it appears that such measures will be determined on a case by case basis rather than creating a general regime.

The same paragraph deals with abandonment, again requiring the federal body for defence ('specially authorised for this purpose') to be informed of "complete or partial elimination of artificial islands installations and facilities", making no reference to any laws or regulations governing abandonment. This however is covered under Chapter 6, dealing with pollution, headed 'Protection and Conservation of Mineral and Living Resources of the Continental Shelf of the Russian Federation'.

Upon application for the creation of artificial islands installations and facilities on the Continental Shelf permits are issued by 'a federal body for geology and sub-soil use specially authorised for this purpose', but it is not clear whether this refers to Roskomnedra or whether this will be a separate body. The permits are issued, allowing for the use thereof of the subsoil of the Continental Shelf for geological study, prospecting, exploration and development of mineral resources of the Continental Shelf following agreement with the federal bodies for geology and sub-soil use, for fishery, for science and technical policy, for defence, for border guard services, for counter intelligent services, for protection of environment and natural resources, for customs control, and if required with other concerned federal bodies of executive power. The pure number of bodies to be consulted and whose agreement is necessary clearly shows an application for the creation and operation of off-shore facilities to be a long and difficult process. Whereas the last paragraph of Article 26 sets out time limits i.e. to receipt notification of an application within 10 days and to provide notification of

granting or denial of a permit within 4 months through a federal body for foreign affairs ('specially authorised for this purpose') appears rather ambitious.

Article 27 sets out the grounds for refusal of a permit in a comprehensive list, including a threat to national security, incompatibility with environmental requirements or information provided in the application having been incorrect or incomplete.

Under the rights and obligations of constructors of artificial island (which includes all operators) as set out in Article 28 paragraph 1.4 again requires the operator to ensure the presence of representatives authorised by federal bodies of executive power who issued the permits for the creation of artificial islands, installations and facilities and an official (as specified in Article 61) of the border guard service, the federal body for geology and sub-soil use, the federal body for state mining supervision, the federal body for fishery and the federal body for protection of environment and natural resources. Again the permit holder is to cover expenses for travel, room and board and full supply on an equal basis with their own managerial staff and access to all premises and objects created under the permit of the federal bodies of executive power. Foreign constructors and operators of such artificial islands installations and facilities may again only commence and carry out operations in the presence and under the supervision of such authorised representatives.

Article 29 covering suspension and termination refers to activities on the artificial islands installations and facilities on the Continental Shelf, not however to the permit. According to this Article the termination of activities would thus leave the permit in place as well as the artificial island, installation or facility. The question arises whether such circumstance amounts to a dumping/abandonment as provided for in Chapter 6 headed 'Protection Conservation of Mineral and Living Resources of the Continental Shelf', as well as what the resulting liabilities are and in whom these vest.

Chapter 6 addresses environmental issues regarding activities on Continental Shelf. Under Article 41 hazardous substance is defined as 'any substance which upon entering the sea may create a threat to the health of people, inflict damage to the living resources, marine flora and fauna, worsen recreation conditions or hinder other kinds of lawful use of the sea and shall include any substance which is subject to control, under this law, other federal laws and international treaties of the Russian Federation'. Under Article 45 reference is made to a list of hazardous substances, waste and other materials which are prohibited to be dumped on the Continental Shelf with such list to be approved by the Government of the Russian Federation with due regard to international treaties. This mirrors the manner in which disposal of substances in the marine environment is regulated in the European Community by treaties, but in Russia there is as of yet no such list

in the Law on Continental Shelf nor in other legislation, nor is there any reference as to who or what organ is to compile such list.

Article 42 deals with the "State Ecological Expert Review on the Continental Shelf", which appears to equate an "environmental impact assessment". Such ecological expert review is stated to be an obligatory measure of protection and conservation of mineral and living resources on the Continental Shelf and is to be conducted by a federal body for protection of environment and natural resources ('specially authorised for this purpose') covering all types of economic activities on the Continental Shelf. Such State Ecological Expert Review is a pre-condition to an application for activities on the Continental Shelf. Article 44 requires state monitoring of the Continental Shelf in environmental terms, to be exercised by a federal body for hydrometeorology and environmental monitoring (again 'specially authorised for this purpose'). This is to be carried out in accordance with the procedure to be determined by the legislation of the Russian Federation. The Chapter Further provides for a system of permits, the application for these, grounds for the refusal and procedure for issuing such permits. Unlawful dumping of waste and other materials on the Continental Shelf is stated to be prohibited, implying rather than expressing that the disposal of any substances without a permit to be regarded as unlawful and therefore prohibited.

Article 46 lists the required contents of an application for a permit for the disposal of waste and other materials on the Continental Shelf in extraordinary detail. Certain information is to be supplied such as "possible influence on recreation zones, possible influence on the marine fauna, habits of fish, crustaceans and fish resources, fisheries and collection of seaweeds". Such 'influences' should however already have been shown under the State Ecological Expert Review which is also precondition for the granting of a permit.

Chapter 7, headed 'Economic Relations when using the Continental Shelf', contains a whole list of payments due, beginning at the application stage, through to the actual activities on the Continental Shelf. This again puts this law in stark contrast to the financial provisions in the Law on Production Sharing, which was designed to simplify the payment system. In particular users of the Continental Shelf are required to pay other taxes and duties stipulated by the legislation of the Russian Federation on taxes and duties which in its generality as well as specific was intended to be avoided by the production sharing legislation.

Under Chapter 8 "Ensuring of Implementation of the Provisions of this Law" bodies are designated for the protection of mineral and living resources on the Continental Shelf, which are again listed to be the federal body for border guard service, federal body for geology and sub-soil use, federal body for state mining provision, federal body for fisheries and the federal body for the protection of environmental and natural resources (all 'specially authorised for this purpose') referred to at this point as "Bodies for Protection of

Resources" notwithstanding the numerous individual listing of precisely all these bodies. Article 61 goes on to say that in performing their duties the Bodies for Protection of Resources shall be guided by this law, other federal laws related to the Continental Shelf and the activities thereon and the international treaties of the Russian Federation.

Reference to the limits of powers vested in official of Body for the Protection of Resources is made, however not defined. These are set out as rights under Article 62 and range from stopping and inspecting all vessels and other water craft, artificial islands, installations and facilities, carrying out operations on the Continental Shelf, to suspend or terminate activities, detain violaters, confiscate fishing tools equipment and instruments, installations and other things, documents and items illegally obtained on the Continental Shelf (which implies without permit), detain vessels and impose fines, require information, with continuous reference to the Law on Continental Shelf, other federal laws relating to the Continental Shelf and international treaties of the Russian Federation.

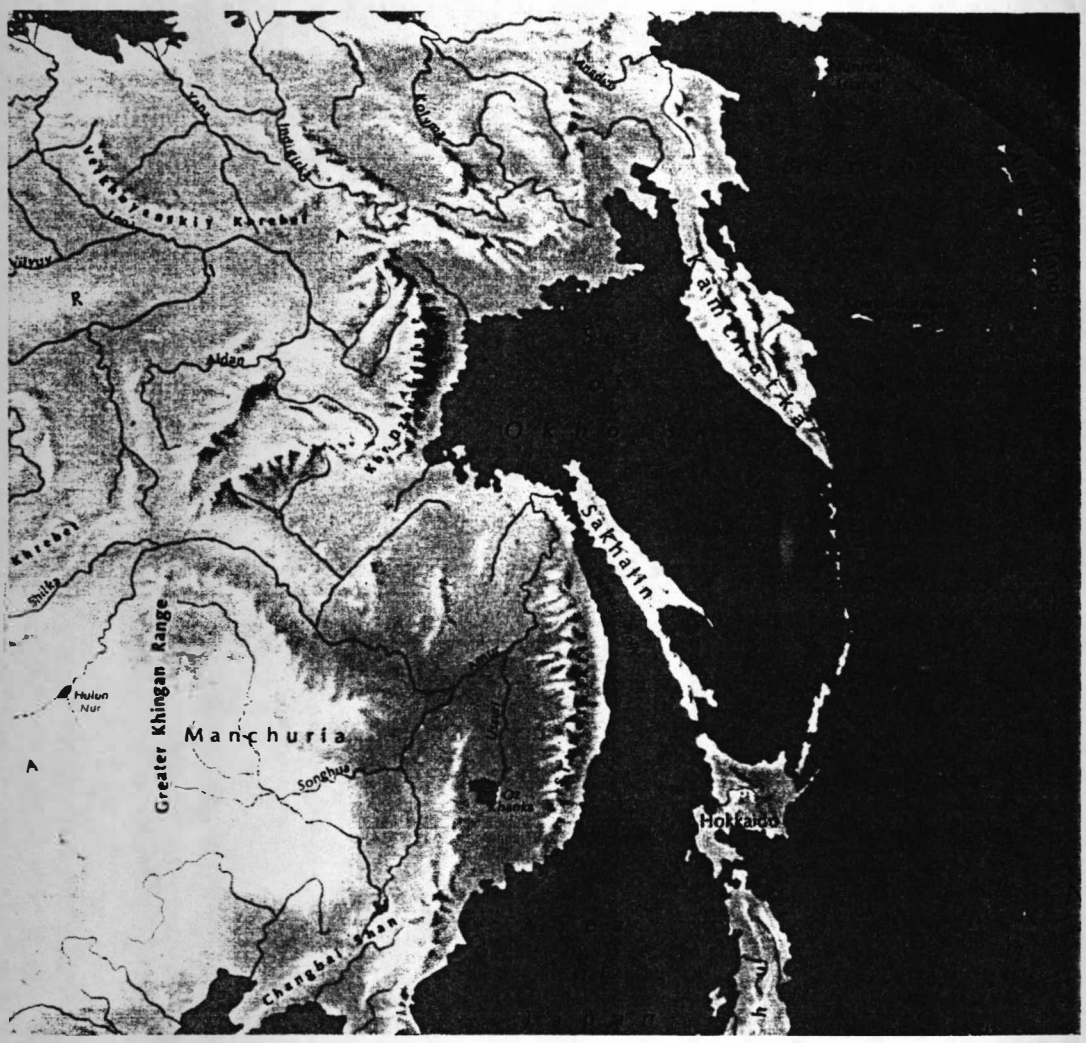
The procedure for detention of vessels, for inspection of vessels, artificial islands, installation and facilities on the Continental Shelf, and the procedure for compiling a protocol is set out, but no provisions are made for dealing with arbitrary acts by officials of the Bodies for the Protection of Resources detrimental to activities on the Continental Shelf, if contrary to the rights granted under an agreement or licence.

Article 74 provides for funding of the Bodies for the Protection of Resources of the Continental Shelf out of the federal budget, and for the Bodies to receive as off-budget funds 25% of the fines imposed for crimes and administrative violations revealed and 25% of the value of the property confiscated by the court for violations and administrative offences under this law. The 'value' is not further defined, in fact the word chosen in Russian can be translated as 'cost' as well as 'value', but it is suggested that the correct word here is 'value'. These funds are to be distributed among the various bodies upon agreement "with due regard to the proportional contribution of such Federal Bodies for the Protection of the Continental Shelf". These funds are to be used to improve the social security and are designated an 'incentive' for military serviceman, workers and employees of the Bodies for the Protection of the Continental Shelf and members of their families, and are to be distributed "in the procedure established by the heads of the bodies of the executive powers". This provision is indeed curious showing clearly how the communist ideology still survives and indeed no mention of such procedure is made, only: "as specified in this paragraph", which in fact it is not. Noticeable is also the contradiction in attempting to thwart corruption by making tenders and auctions obligatory in issuing licences while at this point again positively encouraging corruption.

Article 76 states that this law shall come into force from the date of its official publication. It has to be borne in mind that so far this is a draft law and it is clear that much work is still required, pointing to Russia remaining without a comprehensive legal regime for the Continental Shelf for the time being, with activities on the Continental Shelf having to be governed by such laws as the Law Foreign Investment, Underground Resources and other general laws dealing with resources, their exploration and production.

9. PROJECTS

9.1 Sakhalin



Sakhalin is Russia's most distant petroleum province and a major source of oil and gas for consumers in eastern Siberia and the Far East. By 1992 four fields with combined reserves of an estimated 1.5 to 2 billion barrels of liquids and over 500 bn cubic metres of gas had been delineated off the north east tip of Sakhalin Island in the sea of Okhotsk. Since 1979 the possibility of developing the areas as a source of LNG for export to Japan has been considered, when a group of Japanese companies formed a consortium in the "Sakhalin Oil Development Co-Operation Company "(Sodeco) finding the Chaivo and Odopta fields. The local oil company Sakhalinmorneftegaz identified two further deposits about 200 kilometres to the south at Lunskoye and Piltunaskovskoye. The oil recession in the 1980s undermined the economics of LNG schemes resulted in repeated postponement of any involvement or development by the Japanese in the area, despite serious Japanese interest in the resources. The long standing Russo-Japanese territorial dispute over the ownership of the Kyril Islands, which were occupied by the Soviet Union during World War II still

overshadows Japanese involvement now. Foreign companies were first invited to submit competitive bids for the development of Lunskoye and Piltunaskovskoye fields in December of 1991. Sodeco took Exxon as a partner, bid for the Lunskoye and Piltunaskovskoye fields as well as for the Chaivo and Odopta fields. Other consortia, restricting their bids to the acreage on offer (ie. Lunskoye and Piltunaskovskoye) included Mitsui, McDermot and Marathon, Amoco, Hyundai and BHP, Mobil and BestOil, Royal Dutch-Shell, Showa, Shell, Mitsubishi and Nissho and IWAI and Idemitsu. The winner of the tendering consortia was to be selected by October 1991, the selection date however shifted forward to December.

Initially the authorities in Moscow decided that the tender should be awarded by the regional committee (the 'Committee on Sakhalin Island'), a further review committee in Moscow and the final decision resting with president Boris Yeltsin. In December the Sakhalin Committee was still sifting through the bids with the tender having been awarded to the consortium of Japan's Mitsui and America's Marathon & McDermot in January 1992. In February the decision was overturned by the Moscow based Review Committee and after much wrangling the original decision was reinstated. The tender awarded was for rights to carry out a feasibility study regarding the development of the two fields, Piltunastovskoye and Lunskoye, off the north east coast of Sakhalin. Only when the feasibility study was completed could a development contract for the area actually be concluded. Reserves were estimated at 750 m barrels of liquids and 400 bn cubic metres of gas [15]. This award of the right to carry out the feasibility study did not however guarantee that a development deal would ever be signed.

Among the tenderers was a bid submitted by Exxon and Sodeco, which participated in the joint exploration programme with the Soviets of the area in the late 70s and 80s, and were favoured by the Governor of Sakhalin Island, Valentin Fedorov, in view of promised further Japanese investment. He supported this bid as he wanted to see Sakhalin's resources developed *en grosse* as this consortium was bidding also for the Chaivo and Odopta fields. His opposition to the Mitsui and Marathon McDermot trio caused a serious delay in the award of the tender, showing the impact of increasing influences of the regional powers or at least the struggle for it, as against the centre.

It has been suggested that as a result of this region - centre conflict, President Boris Yeltsin set up a committee of experts to review the way in which the Sakhalin shelf was to be offered to foreign companies. The committee was led by the Russian academic Farman Semyenov, who publicly stated that in his opinion the Sakhalin off-shore should be divided up into small blocks like North Sea and parcelled out to a range of different oil companies. If his views were accepted, the group awarded the contract and hoping that

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15 Nachrichten fur Aussenhandel, 2nd April 1992

development rights would follow, could find parts of the acreage given to other companies. The Mitsui, Marathon McDermot Consortium had expected to follow up the feasibility study with an agreement to develop the tendered area, in view of the developments other companies did however not give up the hope of operating in the area.

In financial terms Moscow had initially intended to cover half of the exploration costs. This soon changed to the tenderers having to carry these at nearly 100 percent and the regional authority of Sakhalin started making demands as well, which had not been agreed with Moscow. Among others was demanded that the successful consortium was to pay for improvement of major parts of the local infrastructure as well as for the development of the coal industry and the agriculture of Sakhalin. Complicating matters , taking steps to protect its long term interest and gaining access to the Sakhalin off-shore, which promises eventually to become an extremely large source of oil and gas virtually on Japan's door step, the Japanese Ministry of International Trade and Industry threatened to withhold credits for the $9 bn Lunskoye and Piltunaskovskoye developments, should Mitsui not agree to admit Sodeco into the Mitsui Marathon McDermot Consortium.

Oil production had been planned to commence at the end of 1995 and gas production in 1999.[16] The study into the development of the two oil and gas fields had a March deadline, while discussions took place in the Parliamentary Commission regarding the introduction of anti-monopoly measures for the exploitation of natural reserves. Some members of the Commission went as far as stating that they wanted to scrap the deal and start the tender all over again.[17] It was not clear whether the intention was to divide up the "territory" among rival consortia, ie. sharing out of the two fields which were the subjects of the study, or dividing up the whole 17,000 square kilometre shelf of Sakhalin, which is certain to contain mineral resources of which the two fields represent a mere 5 to 10 percent. By early April 1992 Mitsui McDermot and Marathon had not completed the feasibility study, but intended to conclude this by the end of April, following which they were to begin with the technical and administrative preparation for oil production. The Exploration Contract concluded with the Russian Parliament on 30th March 1992 in Moscow did however not include exploitation rights.

Whereas it is world practice that the award of a feasibility study would normally be expected to result in a substantive exploitation contract, there is no such precedent in Russia.

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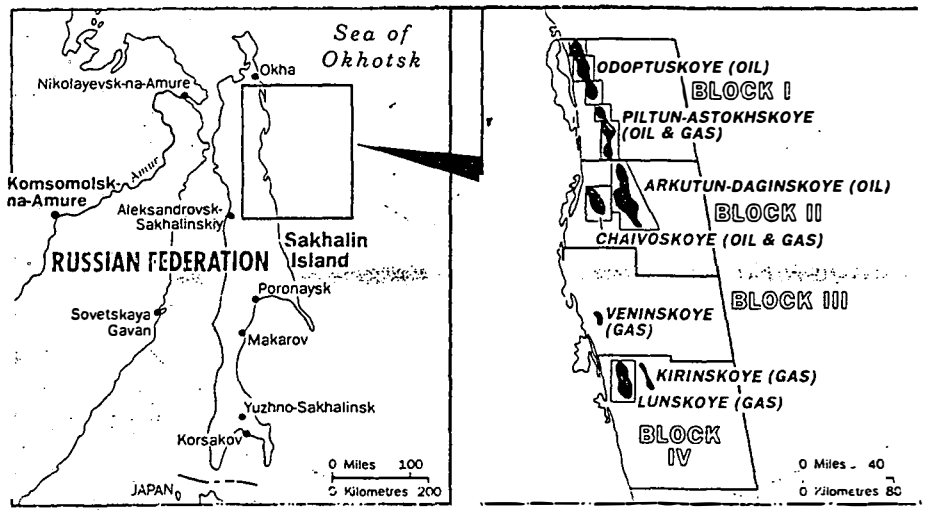
16 Frankfurter Allgemeine, 6th March 1992

17 Financial Times, 30th March 1992

In September 1992 the Vice Governor of the Sakhalin-Region announced that towards the end of 1992 further tenders for the exploitation of oil and gas resources in the off-shore area of Sakhalin were to be invited[18]. This was officially announced by the Russian Government in early 1993, with the committee organising the tender holding its first meeting in Moscow on 19th April. The Russian authorities planned to hold up to five more tenders in the vicinity, holding out the possibility of the Sakhalin waters becoming one of the largest off-shore oil and gas regions in the world. The second tender includes fields with confirmed deposits and other areas where less geological data was available in 23,000 square kilometres in the sea of Okhotsk, east of Sakhalin and 17,000 square kilometres in and around the Bay of Sakhalin in the north west of the Island.



The Mitsui Marathon McDermot Consortium which at that time was known as the '3 M's, having been enlarged to include Royal Dutch Shell, was negotiating with the representatives of the Russian Government about details of the tender including the possibility of profit sharing. The development costs were estimated to be in the region of $10 bn, making it the biggest foreign investment under discussion in Russia at the time.

The ground rules for the new tender were to be announced as soon as the final deal with the (now called) '4Ms' was signed. This was expected to happen in June 1993. Presentations were expected to be held in Sakhalin with packets of geological information to be sold to interested companies.

The Chairman of the Sakhalin Regional Committee of Geology and Mineral Resources refused to indicate the possible scale of recoverable reserves but stated that the tender zone was to be divided into several blocks with varying quality of data, ranging from those where deep drilling had taken place already, to others where

18 Nachrichten fur Aussenhandel, 9th September 1992

no preparation at all for drilling had been done. Two fields were inside this tender zone, Kirinskaya containing mostly gas deposits and Arkutunskoye containing mostly oil.[19]

At the end of March 1993 it had been announced that the Russian Ministry of Economics had approved the Project for exploration for oil and gas on the shelf of Sakhalin with all rights given to the 4Ms consortium. The Consortium was expected to invest between $8 bn and $12 bn dollars in the project with production expected to start in 1999.

However by August 1993 details of the contract were still being negotiated. At this point in time the area had been designated in blocks, with the 4Ms Consortium having been awarded the rights for Blocks 1 and 4 (Piltunastovskoye and Lunskoye fields).

Sodeco was hoping at this time that it would be granted exploration rights nearby, for the Arkutun and Daginskoye oil and gas fields, hoping to recoup some of its $200m plus investment in the area in the exploration of the Sakhalin offshore in the mid 70s. The deadline for bids to be submitted was at that point 10th December, with the Russian Government expecting to announce the winners before the end of the year.[20]

While the coup in 1993 and subsequent national elections to the Russian Parliament (Duma) delayed any legislation, the result of the second tender was surprisingly announced shortly after the elections, with Mobil and Texaco winning the Kirinsky Block (Block 4) and Exxon winning the East Odoptinsky and Ayashsky Blocks (Block 1). Licensing agreements were expected to be finalised by 1st February.[21] The area awarded to Mobil and Texaco gave exploitation and exploration rights for a time period of 25 years, covering an area of 20,000 square kilometres and including the gas condensate fields of Yushno-Lunskoye, Kirinskoye and Veninskoye, which is within itself split into four blocks. Exxon was to explore Blocks 1 and 2 investing in the exploration project $121m and $202m respectively within the next six years. Mobil and Texaco planned a capital engagement of $151m for Block 4, while Block 3 was to remain "unclaimed" for a possible further tender. The Tender Commission was said to have demanded a minimum investment of $100m by the bidders for Block 1 and $120m for each of the remaining blocks.

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19 Financial Times, 13th May 1993

20 Petroleum Economist, August 1993

21 Petroleum Economist, No. 1 January 1994

Initially production sharing of 50/50 between the Russian and the foreign partners was to take place, however this changed to 60/40 in favour of the foreign investor and was regarded as the result of the fact that all the geophysical exploration works regarding the Sakhalin Shelf Project had to be completely financed by the foreign companies.[22]

It was reported in March 1994 that the 4Ms Consortium and the Russian Government had agreed the terms of the Production Sharing Contract with the protocol to be signed by the Consortium and Russia's Deputy Minister for Fuel and Energy, V. Dvurechensky, in Moscow. However the signing of the proposed production sharing contract was made subject to the approval of the negotiated terms by both the Russian Government and members of the Consortium with work on the Project commencing after the Russian Parliament had taken "appropriate action", ie, implemented production sharing legislation.[23] The Contract was signed by the Russian President Victor Tschernomyrdin in June 1994. The project was to cost $9bn, with the World Bank providing credits of $820m. Production at this point was intended to start in the year 2000 with a daily production of 175,000 barrels of oil and 45m cubic metres of gas. Contrary to previous reports Russia was to receive more than 50% of the production.[24]

In a briefing at a press conference held by the Minister of Minerals Fuel and Energy Yuri Shafranik,at the beginning of November, it was stated that the agreement between the Russian Federation and the companies 'Sakhalin Energy Investment' and 'Sakhalin Project' had been signed on June 23rd 1994. The remaining work concentrated on the preparation of draft agreements for Blocks 1 and 3 (negotiations with Exxon, Mobile, Texaco and Sodeco). According to the Minister, negotiations were expected to be completed by the end of 1994 with the agreements ready for signing. The Minister stated that the practical realisation of the Sakhalin projects (like many other major investment projects) was delayed by the adoption of the Law on Production Sharing in the sphere of development of oil and gas resources. He stated further that the draft of the law was almost completed. An agreement in the Sakhalin 1 Project was reported to have been reached in March 1995[25]. Russia is to be represented in the Project by Rosneft and Sakhalinmorneftegaz with the foreign partners Exxon and Sodeco. The profit share was reported to have been agreed on "almost equal shares" the exact figures were not made available. This agreement was made subject to the passing of the 'Law on Production Sharing' with "a number of secondary legal issues" remaining to the settled". Initially Russia had

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22 Nachichten Fur Assenhandel No. 8 12th January 1994

23 Wall Street Journal (New York) 24th March 1994

24 Die Welt (Hamburg) 24th June 1994

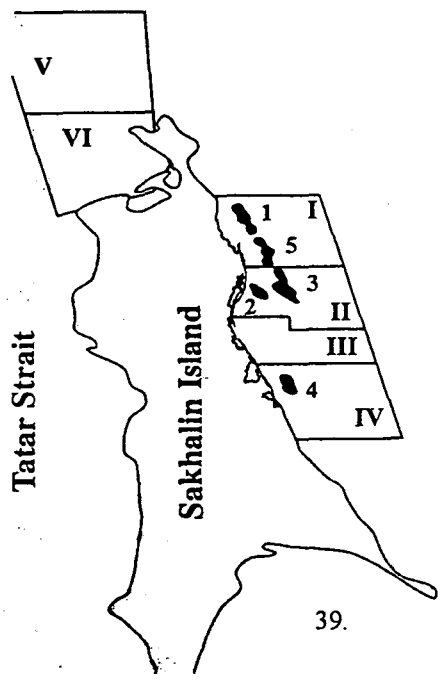
25 Oil and Gas Report, No. 10 (172) March 10th 1995

insisted that profit be divided 50/50 while Exxon and Sodeco each wanted 33% with the remaining 33% to be shared by the two Russian companies.

The Sakhalin1 Project covers the development of Chaivo, Arkutun-Daginskoye and Odopta Fields off the north-east coast of Sakhalin. The total reserves in the contract zone were estimated to be 291m tons of oil and 420.8bn cm of gas.

The joint operating agreement was signed in Moscow on May 11th . The Production Sharing Agreement was announced to be signed in Moscow on June 29th, the Agreement only taking effect after the law "Production Sharing Agreements" was passed. The first stage of the development was estimated to cost $12.7bn with production peaking at 10m tons of oil and 15bn m^3 of gas within four years. It is expected that about 245m tons of oil and 286 bn m^3 of gas can be produced during 33 years of development. The first fields to be developed were the Chaivo and Arkutun-Daginskoye fields. The agreement provides for a three year geological exploration phase with the possible extension of up to two years. Once reserves are declared the commercial production period of initially up to 20 years is to start. The Consortium is entitled to apply to the Government to extend production for a further10 years, and it has the right to hold on to the gas fields which are deemed commercial for up to five years without producing if there are no established market outlets or viable sales contracts.

The Sakhalin 3 Project was reported to be under way with Sakhalinmorneftegaz drilling exploratory wells in 1995 under an agreement with Exxon, Texaco and Mobil Oil, which are developing the three blocks off east Odopta field off Sakhalin Island (Sakhalin 3). The Sakhalin 3 Contract zone covers 15,000 square kilometres with Mobil Oil and Texaco exploring the first section and Exxon to develop the second and third blocks.



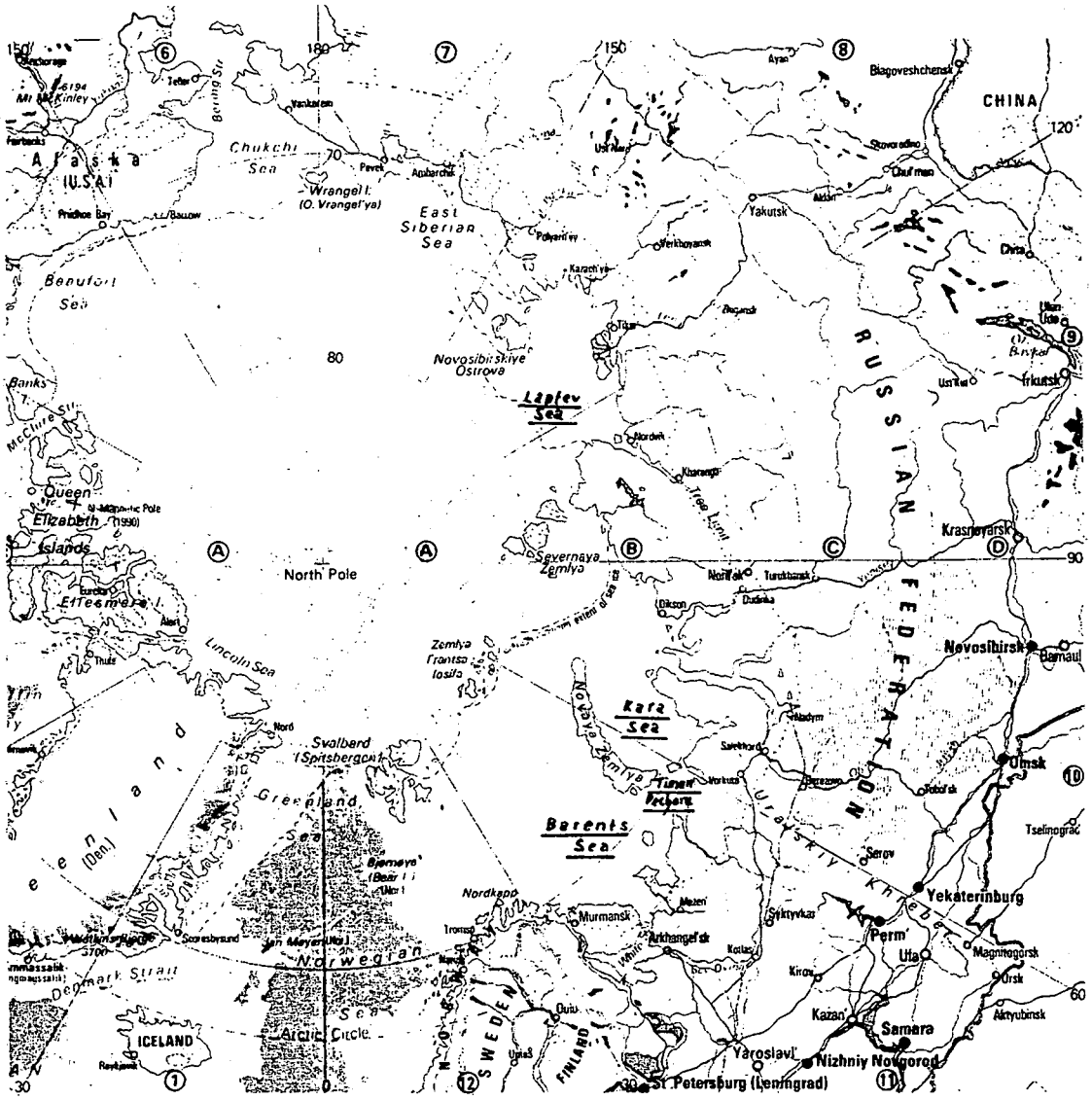
SAKHALIN-1 (fields) (Exxon, SODECO)
1 - Odoptu (oil)
2 - Chaivo (oil & gas)
3 - Arkutun-Dagi (oil)

SAKHALIN-2 (fields) (Sakhalin Energy Co.)
4 - Lunskoye
5 - Piltun-Asokhskoye (oil & gas)

SAKHALIN-3 (blocks)
I - East Odoptinsky (Exxon)
II - Ayashsky (Exxon)
III - Veninsky (unclaimed)
IV - Kirinsky (Mobil & Texaco)

SAKHALIN-4 (blocks)
III - Veninsky (unclaimed)
V - Astrakhanovsky (unclaimed)
VI - Schmidtovsky (bid submitted by Exxon)

Source: Roskomnedra

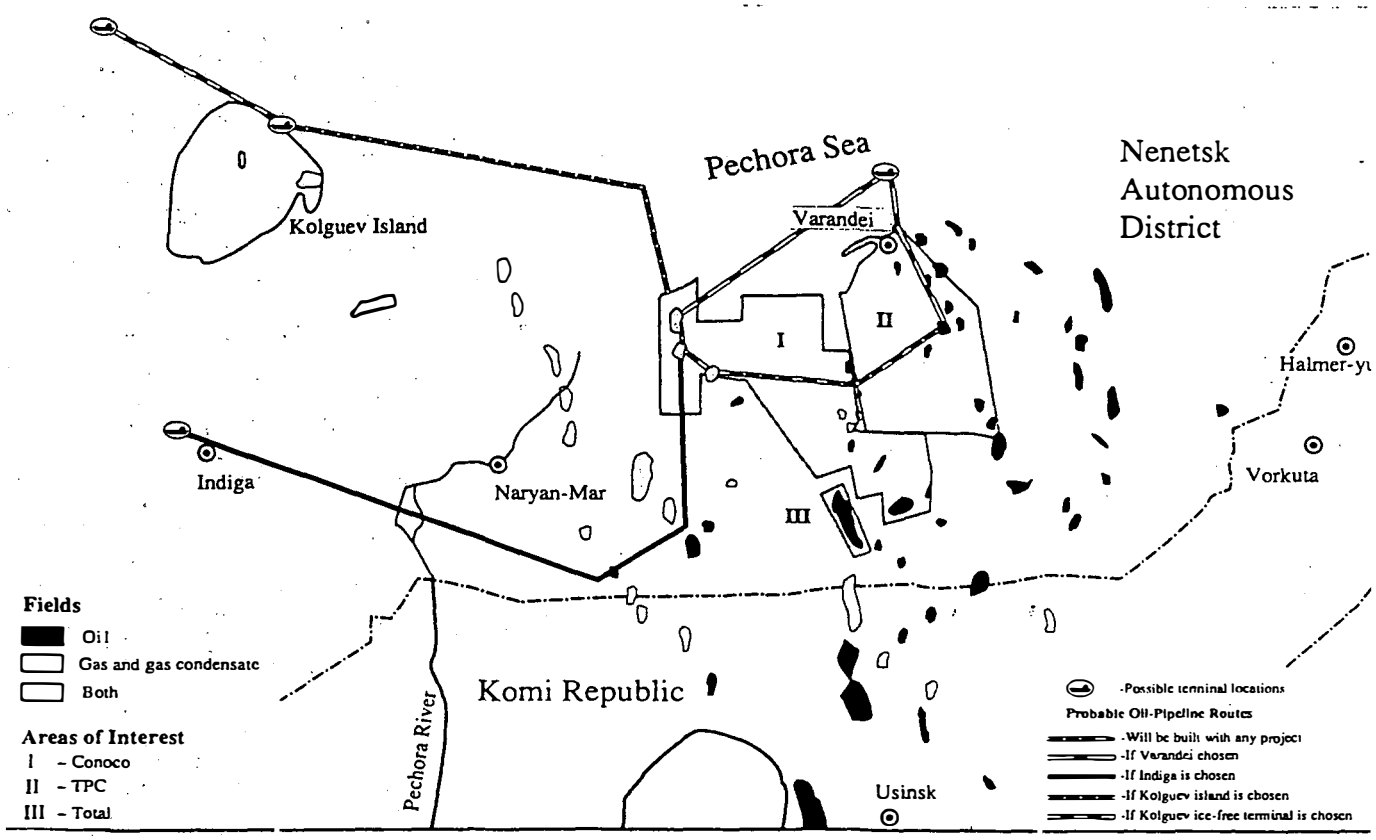


9.2 The Arctic Region - Timan-Pechora

It was announced in May 1992 that later in the year Russia was to offer Western companies a chance to explore for oil in the Arctic waters off Timan-Pechora, north west of the Urals. It is estimated that beneath the ice there are billions of barrels of oil, the estimate based on the very favourable geology in the area. On 11th April 1994 three US Oil majors, Texaco, Exxon and Amoco along with Norsk Hydro of Norway, announced a joint venture to assess and develop the oil reserves of the vast Timan-Pechora basins. The companies conservatively estimated the reserves at 2 billion barrels while the Russian experts believe reserves to be exceeding 5 billion barrels. In terms of investment the figures are estimated to be tens of billions of dollars. Texaco began studying the region in 1990 and acknowledged that the project poses an enormous logistic challenge, which mainly accounts for the high development costs.

The consortium was to enter into a service contract with Arkhangelskgeologica, a regional state owned geological company, which has already drilled 130 wells in the area. There was not to be any direct Russian equity participation in the project. The negative effects of political sensitivity about a foreign consortium having full control of such a large export project were lessened by the fact that the Russian industry lacks the financial and technology ability to tackle the scheme, which is estimated to be in production for up to 50 years. There is also a distinct absence of any developed oil infrastructure in the area, as well as a total lack of terminals. The consortium is to build a dedicated export terminal on the Pechora sea, provide local infrastructure and much needed employment. Negotiations for the project initially started in 1991 reflecting the in Russia common political and legal uncertainty regarding foreign involvement in Russia's oil industry.[26] The joint venture called 'Timan-Pechora Co. LLC' was to appraise the 11 arctic oil fields. Initially an investment of $100m is expected to carry out a detailed appraisal of a field located approximately 1,100 miles to the north east of Moscow and exploration of the further fields to follow. Production is intended to amount up to 120,000 bpd in the year 2000.

In 1994 the intention was that Texaco and Exxon each were to be involved with a 30% share, Norsk Hydro and Amoco each with 20% and the relationship with the Russian partner Arkhangelskgeologica on a contractual basis. Direct participation in equity terms by the Russian side was not intended.



26 Financial Times, 12th April 1994

Actual exploitation has been limited so far to onshore areas.[27] In 1994 23 wells were producing, a further 21 were about to go in to production and 105 were subject to a feasibility study. The consortium was awarded the right of use of oil fields with a total area of 7,310 square kilometres.

By the end of 1994 the Russian partner demanded a 50% equity stake in the project as Arkhangelskgeologica felt it was loosing out by being involved on a contractual basis only. A protocol agreement was intended to be signed in the week of 16th December 1994 which did however not take place. This again reflects the Russian attitude to major oil projects, with the Timan Pechora region seen as one of the most promising oil fields in Northern Russia, the situation whereby a major project is completely under foreign control being unacceptable in political terms. A local newspaper quoted a company official as saying: "We are not some kind of Indonesia or Angola - we do not need to give such a project entirely to foreigners". Under the revised situation working consortium was to have signed a production sharing agreement with Arkhangelskgeologica acting as contractors for the Russian Government. Moscow would retain all ownership rights to the reserves and receive about half the projects cashflow in taxes, royalties and profit sharing.

In January 1995 25 prospective structures had been identified of which 9 were ready for drilling. The structures set for drilling are near the Prirazlomnoye field. It was reported that the attraction of investors to the development project of the Pechora Seas oil and gas reserves were to be based on competitive procedures notwithstanding the existing agreements.

The Prirazlomnoye field was said to be subject of a feasibility study by the off-shore contractor Brown & Root together with Rosshelf and BHP, with a subsequent production sharing agreement, both however being subject to Russian Government approval.[28] It was reported that the project could be sanctioned by October with oil production possible as early as the winter of 1998. The Prirazlomnoye field is about 300 kilometres north of the Arctic circle, with the nearest port being Naryan Mar, located 240 kilometres to the south west. The field is only 55 kilometres offshore and the nearest industrial centres are 860 kilometres away at Arkhangelsk and Severodvinsk. As with all other projects it was stated that the potential for oil and gas development in Russia was vast but the rate of overall development would depend completely on available financing and above all Russian policies and legislation encouraging investment.

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27 Nachrichten fur Aussenhandel No. 79 25th April 1994

28 Lloyds List, March 9th 1995

A Russian - Finnish joint venture which was formed in February 1995 by a number of Russian enterprises and the Finnish companies Neste and Kvaerner Masa-Yards Inc. to develop the Pechora shelf and study its shallow water arctic blocks on an inter-governmental agreement with Finland on joint research and technical projects. Drilling was to start in mid-1995 at the Pomorsk and Kolokolomorsk structures near the Russky Zavorot Peninsula. The drilling was to take place both on-shore and in a 12 mile off-shore zone in the Pechora Gulf with recoverable reserves estimated at 160m tonnes of oil, with 30m tonnes in the Pomorsk Structure, 50m tonnes in the Kolokolomorsk Structure and 80m tonnes in the Khodovarikha Structure. Exploratory drilling was to be conducted at the Pomorsk and Kolokolomorsk structures from 1995- 1998 and at Khodovarikha in 1996 -1998 with field facilities to be built between 1998 -2000 with test production beginning upon completion of these. Any timetabling however, as experienced by all consortia, remain academic in view of bureaucratic delays and legal and fiscal uncertainties.

The Prirazlomnoye oil field was reported to be subject of an international tender at the end of 1992. Initial research into the resources of the Prirazlomnoye field was carried out by Arktikmorneftegasraswed (Arktikmor) which was a state-owned prospecting company, founded in 1979. Arktikmor had prepared the documentation for the first international tender which was passed to the Ministry of Geology and the Ministry for Fuels and Energy, which were to decide whether to hold an international tender or not. As the Russian arctic is also a strategic area, the Defence Ministry played a major role in the decision making process.

In mid-1992 a further exploitation company was founded by Gasprom, combining about 19 Russian engineering and equipment enterprises, called 'Russian Enterprise for the Exploitation off the Shelf' (Rosshelf). Many of these Enterprises had been part of the military industry trying to convert to civilian industry, none of which however had any experience in oil or gas exploitation or exploration. While Arktikmor had anticipated that Rosshelf was to participate in the form of a contractor in, for example production and delivery of drilling equipment etc, Rosshelf itself very quickly took a leading role in the participation of actual exploration and exploitation of the resources as either a potential leader, or at least a major player in the participation with international consortia.

9.3 Barents Sea

The Barents Sea Shelf covers nearly 2 million kilometres and is estimated to hold 40% of Russia's off-shore hydrocarbon reserves, or about 40 billion tonnes of fuel equivalent.[29]

By 1992 the Barents and Kara Seas had already yielded vast gas finds. In 1990, a US - Norwegian - Finnish Consortium between Conoco, Norsk Hydro, Neste, Imatran Voima and Metra Engineering, the 'Arctic Star Consortium, teamed up with the Soviet Oil Ministry to undertake feasibility studies at the Stokhmanovskoye field. With the collapse of the Soviet Union and the disintegration of the ministries, the Group was left without a local partner. At the time it was expected that the Ministry of Fuels and Energy would eventually give its support to the project. Whilst the Western Consortium spent tens of $millions surveying the area, in late 1992 an all Russian Consortium was awarded the concession to develop the giant gas field. The Western Consortium was not offered any compensation.

In late January 1995, the Government Committee approved a general programme to explore and develop the hydrocarbon resources in the Barents Sea, however, on the basis that certain regions of the Shelf would only be open to Russian enterprises. Foreign companies were not eligible to bid in the tenders for blocks on offer. However, Russian enterprises could obtain licences to operate in the area and would be able to contract with foreign companies or draw foreign loans for the projects. The authors of the programme stated the reason for the exclusion of foreign companies was the need for support of domestic ex-defence enterprises in the northern regions, which were to be be used to develop Barents Sea resources.

The Prirazlomnoye field in the Barents Sea is being developed by the Russian company Rosshelf and the Australian oil company BHP. Production is scheduled to begin in 1998-99, with total production estimated to be 57 - 62 million tonnes of oil. Rosshelf was also licensed to develop the Stokhmanovskoye Gas Condensate Fields, with reserves estimated to be about 3 trillion cubic metres of natural gas and 22.5 million tonnes of gas condensate.

In February 1995 Rosshelf was reported to have the results from the exploration of the Stokhmanovskoye and Prirazlomnoye Fields. Since Rosshelf, teaming up with BHP snatched the development from The Arctic Star Consortium of Conoco, Norsk Hydro, Neste, Imatran Voima and Metra Engineering[30], Rosshelf has sunk

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29 Oil and Gas Report No. 9 (164) 1st March 1995.

30 Nefte Compass, 27th November 1992

three wells in the Prirazlomnoye Field. The first well was drilled in 1993 to 2,585 metres and tested at over 4,000 b/d of crude. The second and third wells were spotted in the northern sector in 1994 to a depth of 2,370 and 4,503 metres tested at 420 b/d and 2,600 b/d respectively.

Exploration of the more prospective Stokhmanovskoye Field was stated to be lagging behind schedule due to its geological structure being more complicated than previously expected. Only one well had been drilled by February 1995 to a depth of 2,450 metres with testing to be completed in 1995. The Stokhmanovskoye Field reserves are estimated at 2.88 trillion cubic metres of natural gas and 21.8 million tonnes of gas condensate. Annual production is expected to be 50 billion cubic metres of gas and 700,000 tonnes of condensate.

9.4 Kara Sea

While it was estimated that the Stokhmanovskoye Development would require an expenditure of at least $20 billion, exploitation of the giant fields in the Kara Sea, off the Yamal Peninsula, were expected to be even higher. Initially, environmentalists did succeed in delaying development of gas fields onshore the Yamal Peninsula, but development of the region will take place in view of the vast amounts of reserves located in this area. Two of the four fields, Rossanovskoye and Leningradskoye are estimated to contain combined reserves off 6 trillion cubic metres.

9.5 Laptev Sea

The reserves in this area are estimated to be between 3.6 billion and 8.7 billion tonnes of hydro carbons, of which oil is believed to account for at least 70%. Development of this area is still in the preliminary stages. Under the "Polar Search 1992 Programme" a joint venture was being organised between the Yakutsian Explorer, Yakutskgeophysika and Fairfield Industries of Houston. In the Spring of 1994, a seismic vessel was fitted out to collect seismic data of 2,400 kilometres. The Laptev Sea is ice bound for ten months and only ice free in August and September, severely restricting the amount of work that can be done. The companies were reported to be willing to put a minimum of $360,000 towards the Polar Search 1992 in order to gain access to the resulting data at preferential prices and hope to position themselves to pick up exploration opportunities in the area despite the requirement of extremely high investments.

9.6 Baltic Sea

In June 1995 it was reported that Russia's State enterprise Rosneft together with Kaliningradmorneftegaz (based in Kaliningrad, the Russian enclave on the Baltic Sea) and a number of German oil companies had formed a consortium to develop a field in the Baltic Sea, near the Kaliningrad region. The consortium is to sign a production sharing agreement providing for an almost equal division of profits between the German and Russian companies. The agreement is to be finalised and signed, again subject to the passing of the Law on Pproduction Sharing.

The cost of the project is estimated to be $280 million, with $130 - $140 million to be invested in field construction alone. Russia is to provide $133 million in financing which is to be drawn from western banks.

At the field a stationary platform is to be installed at a location 15 kilometers offshore at sea depths of 30 meters to drill 24 wells. Daily flows from each well are estimated to be averaging 200 tons with the commercial reserves of the field estimated at nearly 10 million tons which would sustain production for 16 years.[31]

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[31] Oil and gas report no. 25 (187), June 23rd 1995

10. Conclusion

The last few years and 1995 in particular, have seen major activity by the Russian legislators trying to establish a legal regime for the oil and gas industry. The proposed and discussed legislation reflects the desparate need for a stable regime which is widely recognised, but it also shows the conflict between the urgent need for investment and deep seated reluctance to share strategic resources. The political situation itself in Russia has not stabilised, rather the opposite and in view of the general attitiude to oil and gas as a valuable natural resource and earner for much needed hard currency has to be seen against background of rising resentment of foreign interests in a situation of rising nationalism.

While the Russian oil and gas industry is desperate for investment, the political situation is not such that a comprehensive system on the basis of international practices is likely to be in place in the near future. The general elections at the end of 1995 are certain to bring further changes to the political landscape in Russia, which looking at the present situation appears unlikely to aid the oil and gas industry's need for foreign investment and technology, at least not on such scale as necessary, as in such major projects as the Sakhalin offshore.

11. SCHEDULES

11.1 Early Russian and American Oil Production and Exports (thsd metric tons)

	Production		*Export*	*US Production*
1860	4			
1861	4			
1862	4			
1863	6			
1864	9			
1865	9	2		340
1866	13	2		
1867	17	3		
1868	29	2		
1869	42	1		
1870	33	2		
1871	26	1		
1872	27	2		
1873	68	1		
1874	106	2		
1875	153	2		
1876	213	2		1.242
1877	276	1		
1878	358	1		
1879	431	5		
1880	382	3		3.575
1881	701	18		3.762
1882	870	19		4.128
1883	1.039	59		3.189
1884	1.533	113		3.294
1885	1.966	178		2.973
1886	1.936	247		3.819
1887	2.405	311		3.846
1888	3.074	573		3.755
1889	3.349	734		4.782
1890	3.864	788		6.232
1891	4.610	889		7.384
1892	4.775	937		6.870
1893	5.620	985		6.587
1894	5.040	880		6.710
1895	6.935	1.059		7.193
1896	7.115	1.058		8.290
1897	7.566	1.046		8.225
1898	8.635	1.115		7.530
1899	9.264	1.392		7.762
1900	10.684	1.442		8.652

1901	11.987	1.559	9.468
1902	11.621	1.535	12.072
1903	11.099	1.784	13.662
1904	11.665	1.837	15.923
1905	8.310	945	18.322
1906	8.885	661	17.203
1907	9.760	733	22.589
1908	10.388	797	24.280
1909	11.248	796	24.911
1910	11.283	859	28.500
1911	10.547	855	29.981
1912	10.408	839	30.319
1913	10.281	948	36.144
1914	10.013	925	38.230
1915	10.138	78	40.904

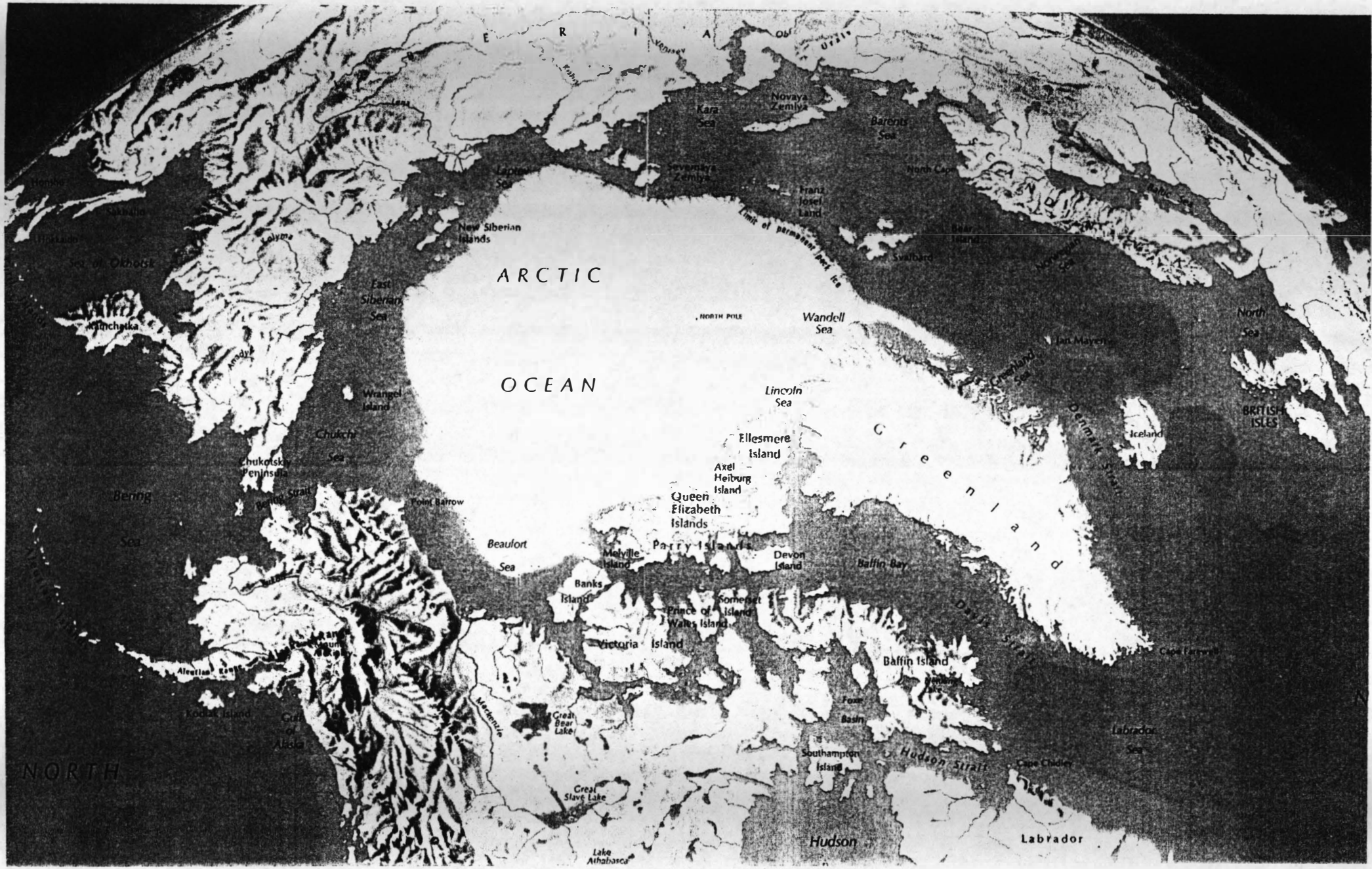
11.2 Conflicting Provisions in the Russian Energy Laws

Provisions	Law on Underground resources	Draft Law on the Continental Shelf	Draft Law on Oil and Gas	Draft Law on Production Sharing Agts
License as main Document	Yes	Yes	Yes	No
Agreement as main Document	No	No	No	Yes
Direct negotiations may be substituted for Tender	No	No	Yes	Yes
Transfer of Subsoil-use Rights to a Third Party	No	No	Yes	Yes
Guarantees against subsequent (adverse) Laws	No	No	Yes	Yes

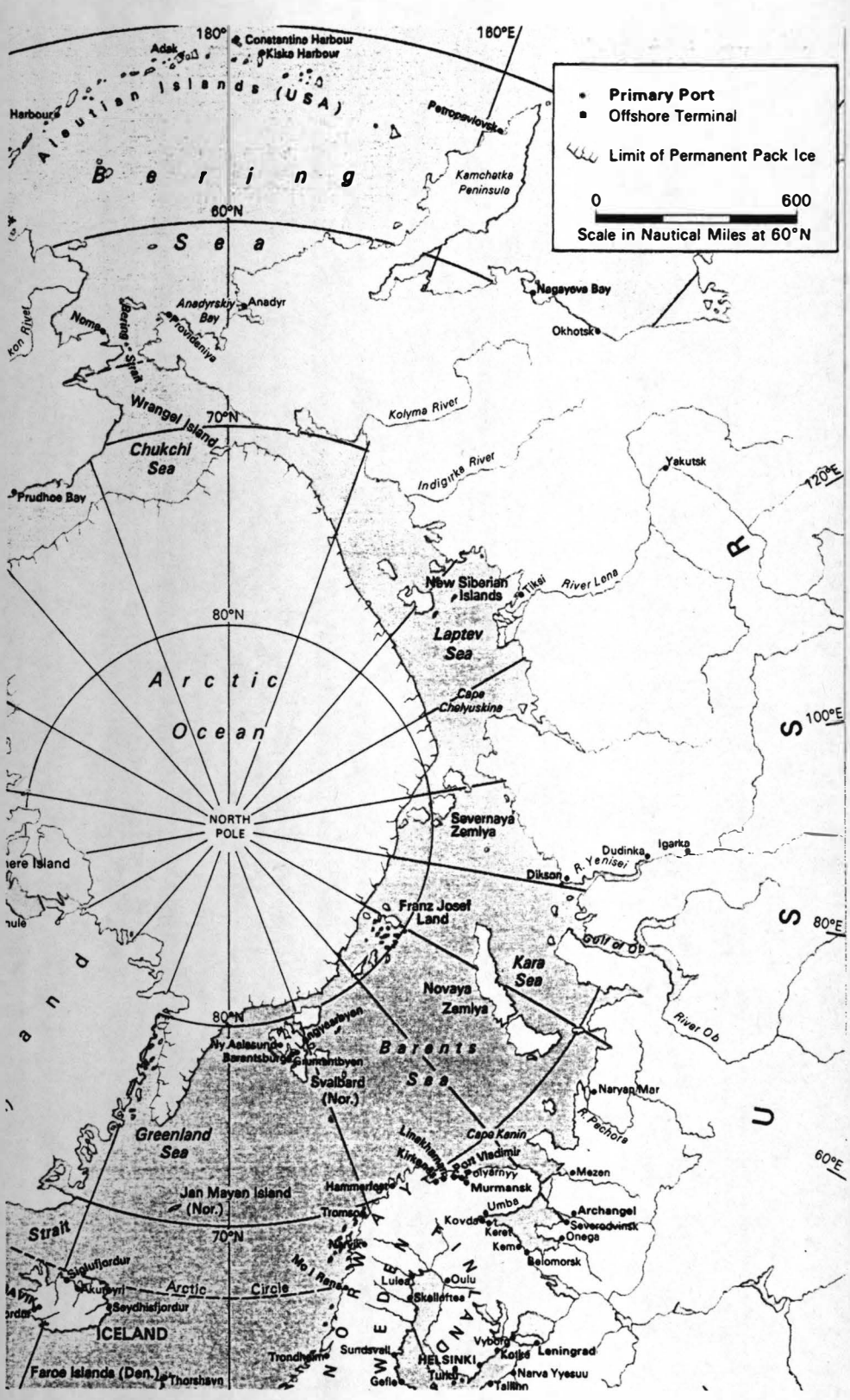
11.3 Offshore Production Sharing Agreements in Russia

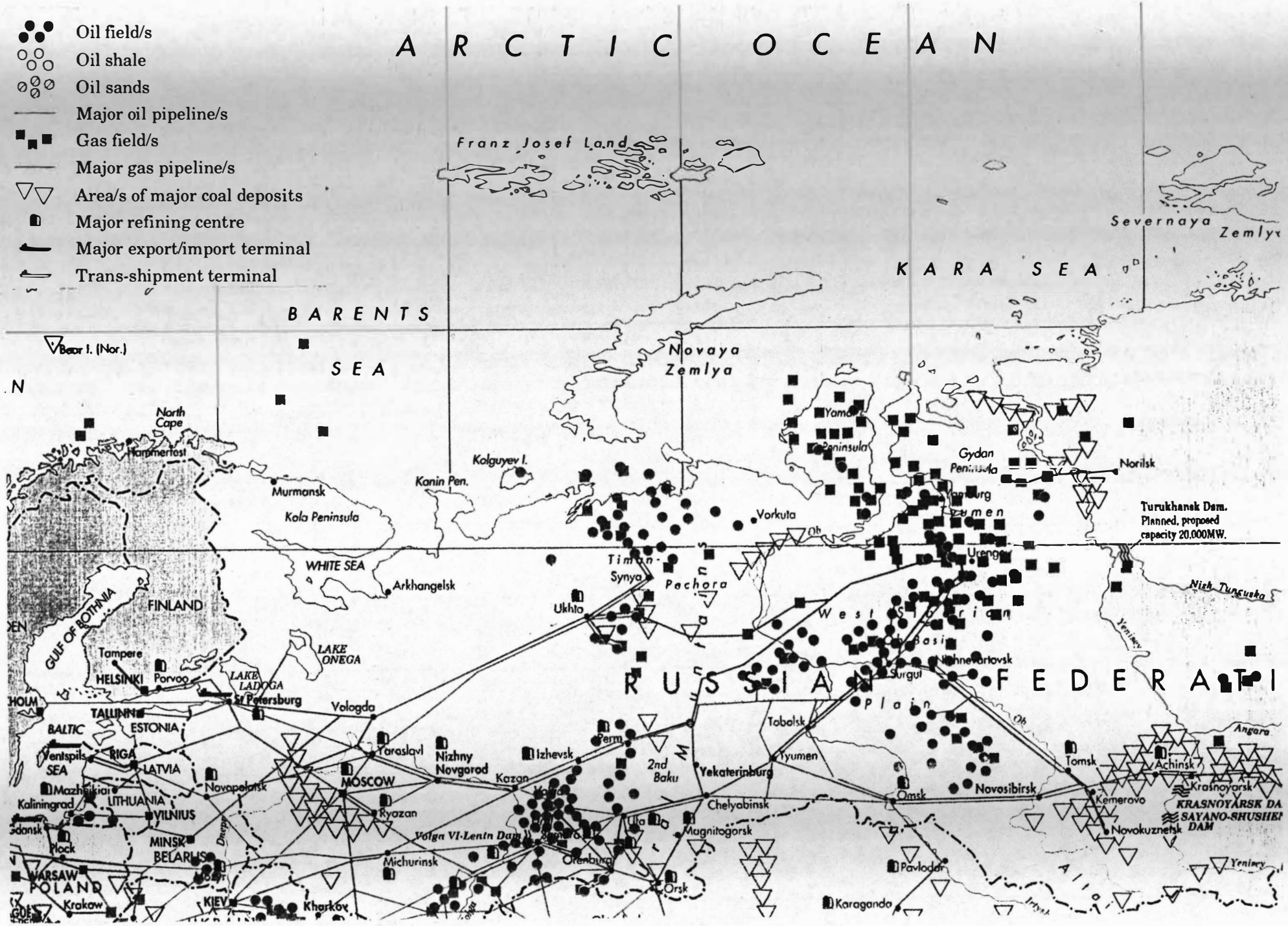
Foreign Partners	Russian Partners	Inception	Oilfield Locations	Status
Exxon (US), Sodeco (J)	None	1976	Sakhalin Shelf: Chaivo Odoptu, Arkutun-Dagins-koye (Sakhalin I)	PSA negotiations
Sakhalin Energy Investment Company, formed by Marathon (US) McDermott (US), Mitsui (J), Mitsu-bishi (J), Royal Dutch/Shell (UK/H)	None	1988	Sakhalin Shelf: Pilun-Astokhskoye, Lunskoye (Sakhalin II)	PSA signed, awaiting PSA Legislation
Timan Pechora Company, formed by Texaco (US), Exxon (US), Amoco (US), Norsk Hydro (N)	Arkhangelsk-geologia	1990	Timan Pechora Region	PSA negotiations with Russian Govt
Amoco (US)	Yugansk neftegaz	1992	Khanty Mansyisk Auto-nomous Area: Priobskoe	Evaluation of feasability studies
Mobil (US), Texaco (US)	None	1993	Sakhalin Shelf: Kirinsky Block (Sakhalin III)	Preparation of feasability studies and PSA
Exxon (US)	None	1993	Sakhalin Shelf: East Odoptu and Ayashsky Blocks (Sakhalin III)	Preparation of feasability studies and PSA

Per State Duma Committee for Economic Policy (April 1995)

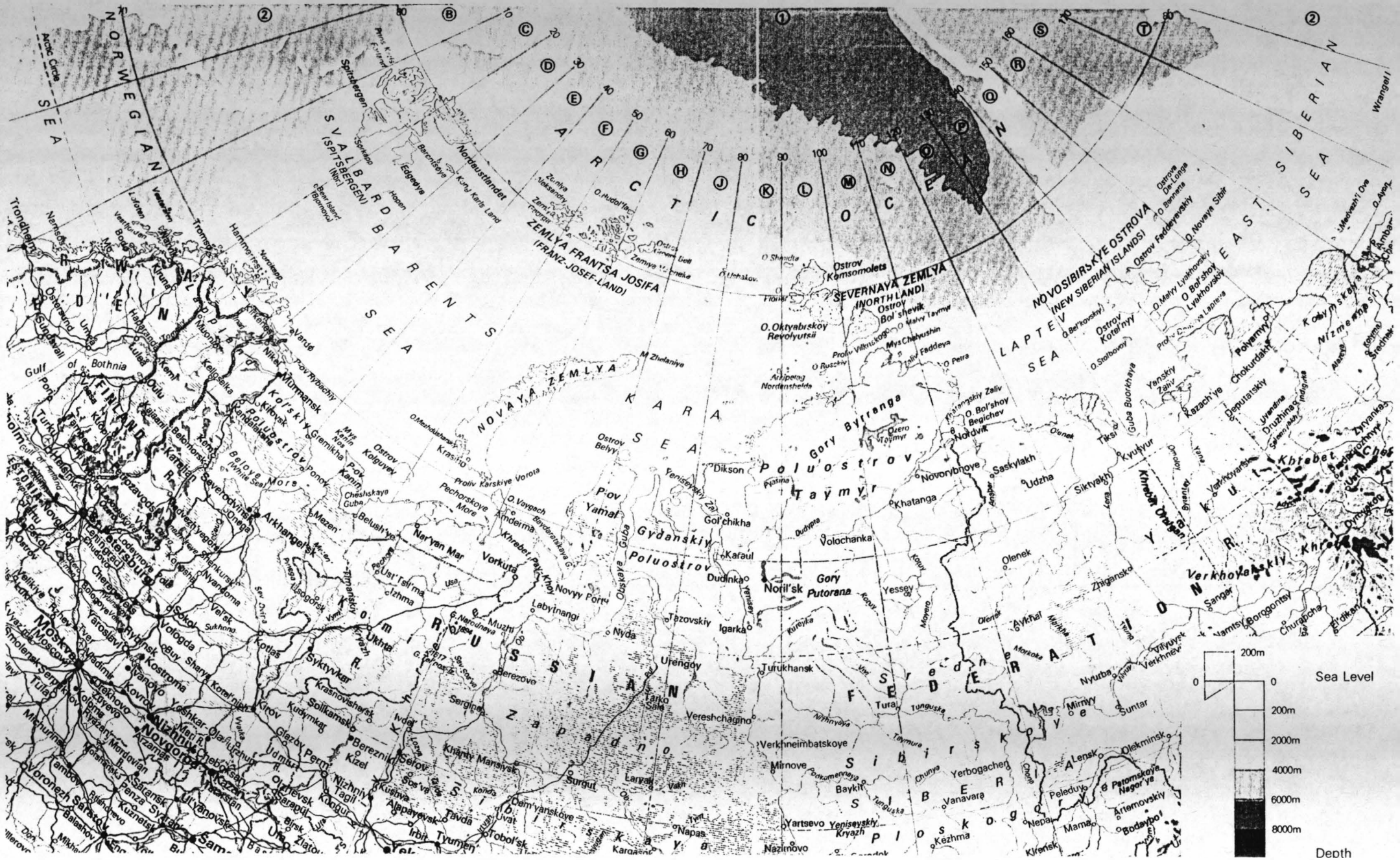

ARCTIC
OCEAN
NORTH POLE
Kara Sea
Novaya Zemlya
Barents Sea
Severnaya Zemlya
Franz Josef Land
Laptev Sea
New Siberian Islands
Limit of permanent pack ice
Svalbard
Bear Island
East Siberian Sea
Wandell Sea
Kamchatka
Wrangel Island
Chukchi Sea
Chukotsky Peninsula
Bering Strait
Bering Sea
Point Barrow
Beaufort Sea
Lincoln Sea
Ellesmere Island
Axel Heiburg Island
Queen Elizabeth Islands
Parry Islands
Melville Island
Devon Island
Banks Island
Somerset Island
Prince of Wales Island
Victoria Island
Baffin Bay
Greenland
Jan Mayen
Greenland Sea
Denmark Strait
Iceland
North Sea
BRITISH ISLES
Baffin Island
Cape Farewell
Davis Strait
Foxe Basin
Labrador Sea
Hudson Strait
Cape Chidley
Southampton Island
Great Bear Lake
Great Slave Lake
Lake Athabasca
Hudson
Labrador
Aleutian Range
Kodiak Island
Gulf of Alaska
Mackenzie
NORTH
Lena
Yenisey
Ob
Urals
Okhotsk
Hokkaido
Honshu
Sakhalin
Kolyma
Anadyr

The Russian Arctic and Far East



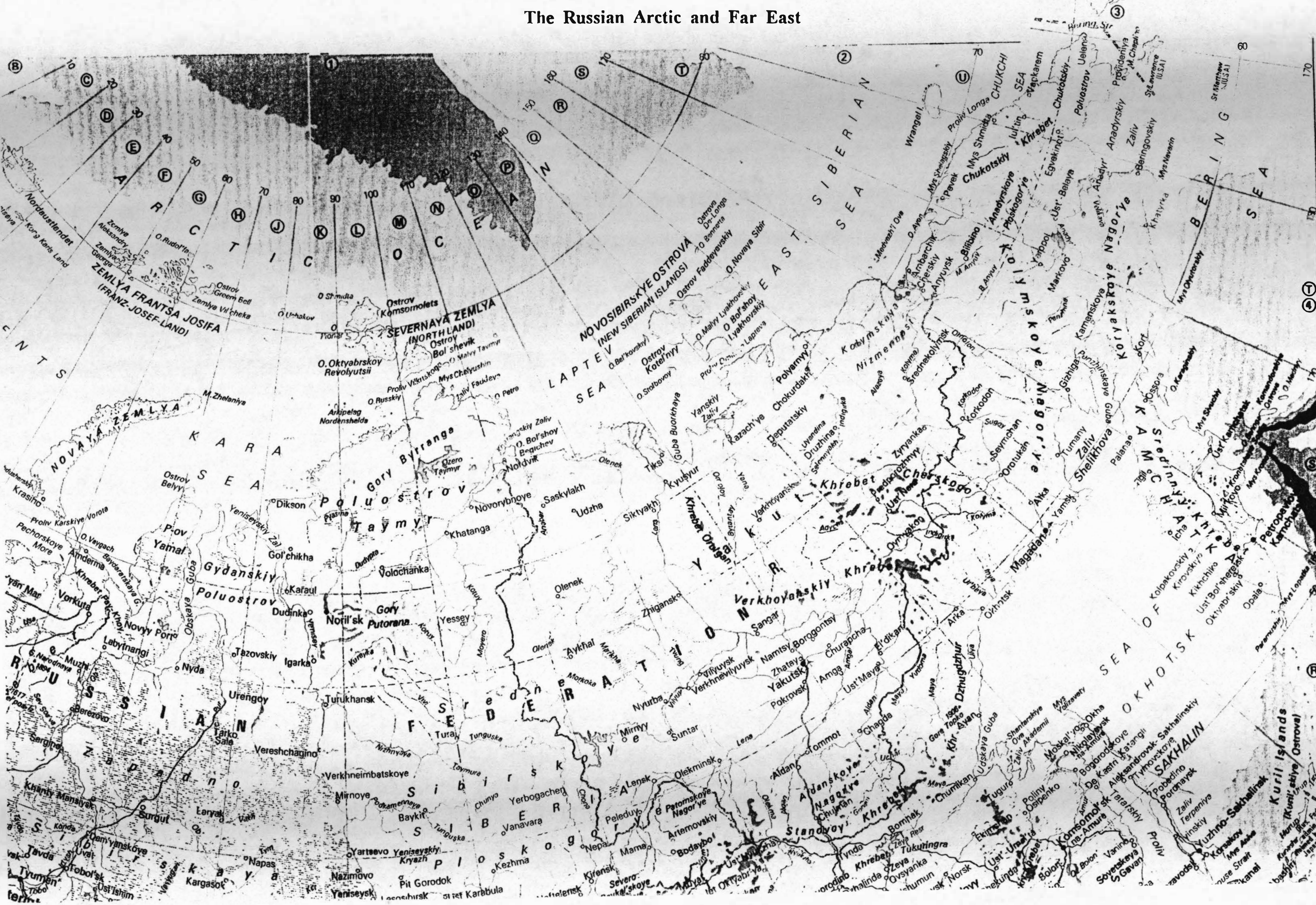

Oil field/s
Oil shale
Oil sands
Major oil pipeline/s
Gas field/s
Major gas pipeline/s
Area/s of major coal deposits
Major refining centre
Major export/import terminal
Trans-shipment terminal
ARCTIC OCEAN
Franz Josef Land
Severnaya Zemlya
KARA SEA
BARENTS SEA
Bear I. (Nor.)
Novaya Zemlya
North Cape
Hammerfest
Murmansk
Kola Peninsula
Kolguyev I.
Kanin Pen.
Yamal Peninsula
Gydan Peninsula
Norilsk
Vorkuta
Turukhansk Dam. Planned, proposed capacity 20,000MW.
WHITE SEA
Arkhangelsk
Timan
Pechora
Synya
Ukhta
Urengoy
Nizh. Tunguska
West Siberian Basin
FINLAND
GULF OF BOTHNIA
LAKE ONEGA
LAKE LADOGA
Tampere
HELSINKI
Porvoo
St Petersburg
Surgut
Nizhnevartovsk
RUSSIAN FEDERATION
Volga
Ural Mts
Volgograd
Saratov
Tobolsk
Tyumen
Perm
Izhevsk
Nizhny Novgorod
Yaroslavl
Vologda
TALLINN
ESTONIA
BALTIC SEA
RIGA
LATVIA
Ventspils
Mazheikiai
LITHUANIA
Kaliningrad
VILNIUS
Novapolotsk
MOSCOW
Ryazan
Kazan
2nd Baku
Yekaterinburg
Chelyabinsk
Magnitogorsk
Omsk
Novosibirsk
Tomsk
Kemerovo
Achinsk
Krasnoyarsk
KRASNOYARSK DAM
SAYANO-SHUSHENSK DAM
Novokuznetsk
Angara
Yenisey
Volga VI-Lenin Dam
MINSK
BELARUS
Plock
WARSAW
POLAND
Krakow
KIEV
Kharkov
Michurinsk
Orenburg
Orsk
Pavlodar
Karaganda
Irtysh
Ob

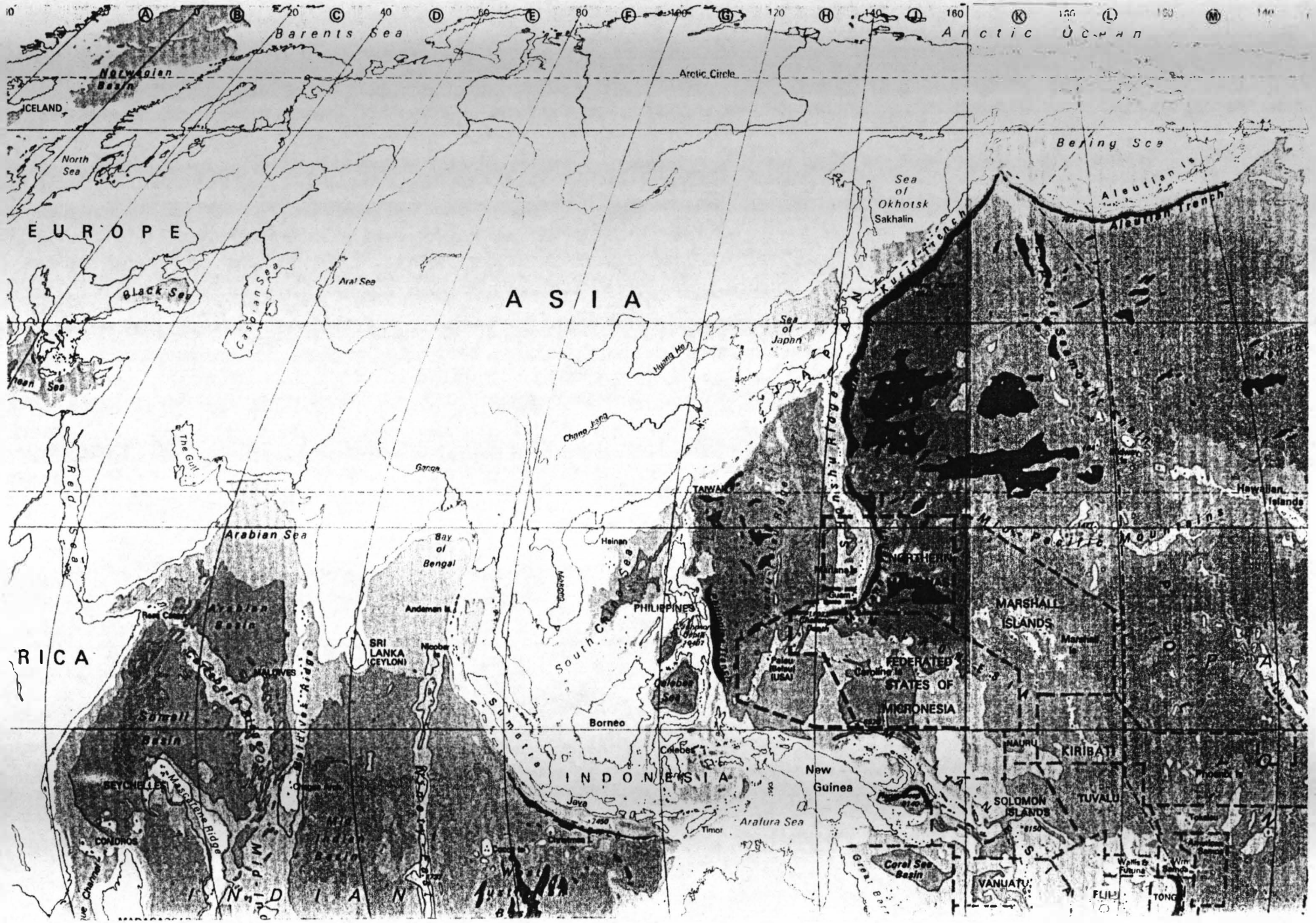
The Barents Kara and Laptev Sea



The Russian Far East

The Russian Arctic and Far East




Barents Sea
Arctic Ocean
Norwegian Basin
ICELAND
Arctic Circle
North Sea
Bering Sea
Sea of Okhotsk
Sakhalin
Aleutian Is.
Aleutian Trench
EUROPE
Black Sea
Caspian Sea
Aral Sea
ASIA
Kuril Trench
Sea of Japan
Yellow Sea
Huang Ho
Chang Jiang
The Gulf
Ganga
Red Sea
TAIWAN
Hawaiian Islands
Arabian Sea
Bay of Bengal
Hainan
Mid Pacific Mountains
Andaman Is.
PHILIPPINES
MARSHALL ISLANDS
Arabian Basin
SRI LANKA (CEYLON)
Nicobar Is.
South China Sea
Celebes Sea
FEDERATED STATES OF MICRONESIA
Somali Basin
Borneo
Celebes
KIRIBATI
SEYCHELLES
INDONESIA
New Guinea
Java
Timor
Arafura Sea
SOLOMON ISLANDS
TUVALU
CONDROS
Mid Indian Basin
Coral Sea Basin
VANUATU
FIJI
INDIAN

[As published in *Rossiyskie Vesti,* No. 7(431), 1994]

DECREE

of the President of the Russian Federation

December 24, 1993, No. 2285

On Production Sharing Agreements Relating to the Use of Subsoil

With the object of creating a legal framework for attracting Russian and foreign investment into the exploration, development and production of mineral resources on the terms and conditions of production sharing agreements prior to the entry into effect of Russian Federation laws that will govern the use of such agreements, and pursuant to Sections 2 and 3 of Decree No. 1598 of the President of the Russian Federation, dated October 7, 1993, "On Regulatory Activities During the Gradual Constitutional Reform in the Russian Federation," I hereby decree that:

1. Production sharing agreements (hereafter referred to as "agreements") shall represent a form of contractual relations between the state and the investors that use subsoil, which shall provide for the minerals so extracted to be shared between the contracting parties and which shall replace the levying of taxes, fees, duties (including, without limitation, customs duties), excise taxes and any other mandatory charges required under the legislation in force (hereafter referred to as "taxes"), with the exception of the income tax and royalties which the parties may agree to pay both in cash and in kind.

2. Parties to the agreements shall be as follows:

- the state - the Russian Federation, represented by the Government of the Russian Federation and an executive authority of the constituent entity of the Russian Federation, on the territory of which the subsoil area is located, or by such agencies as may be appointed by them;

- the investor - a legal entity, including, without limitation, a foreign legal entity, or a group of such legal entities; provided, however, that a new legal entity may or may not be created under the laws of the Russian Federation.

3. The state may authorize an enterprise under its control to perform certain functions related to control over the performance of the terms and conditions of the agreements and/or participation in the implementation thereof.

4. The rights to use subsoil on the terms and conditions of agreements shall be granted to investors in accordance with such procedures as may be specified in the legislation of the Russian Federation and shall be evidenced by a license.

In the event that a group of legal entities shall act as a [collective] investor without creating a new legal entity, such license may be issued to one of such legal entities; provided, however, that such license shall state that such entity acts for the behalf of such group.

5. The agreements shall set out the terms and conditions for the use of the [relevant] area of subsoil, including, without limitation, special provisions defining the rules for:

- determining the amount, including, without limitation, the maximum amount, of the output of mineral resources, to which the title shall be transferred to the investor as reimbursement for production costs;

- distributing between the state and the investor such of the mineral resources produced as will remain after payment of royalties and after title to a portion of the mineral resources produced has been transferred to the investor as reimbursement for production costs;

- transferring to the state such portion of the mineral resources as may belong thereto under the terms and conditions of the [relevant] agreement;

- payment of the income tax and royalties.

6. The portion of the mineral resources production which, under the terms and conditions of the [relevant] agreement, belongs to the state shall be put at the disposal of such agencies or enterprises as may be appointed thereby.

The portion of the mineral resources production (or of the value in cash of such production) which has been received by the state as a result of sharing therein shall be allocated pursuant to such special contracts, not forming a part of the agreements, as may be entered into between the executive authorities of the Russian Federation and those of the constituent entities thereof.

Such amounts as may be collected in income taxes and royalties shall be allocated and shall accrue to the respective budgets pursuant to the legislation in force.

7. The mineral resources whereto the investor has received title under the [relevant] agreement may be taken by such investor out of the Russian Federation in accordance with such rules as may apply to the export of products produced by the exporter itself; provided, however, that in

respect of enterprises that do not have the right to take the products of their own manufacture out of the Russian Federation without licenses, long-term export quotas for such mineral resources shall be specified in the agreements.

8. Such producer goods as are taken by investors into the Russian Federation under the agreements shall be exempted, as provided in Section 1 hereof, from the value-added tax and customs duties.

9. Unless otherwise provided in the agreement, the new fixed assets that are created in the course of implementation of such agreement shall remain the property of the investor.

10. The provisions of the agreements shall remain in force throughout the term of the agreements. Unless otherwise provided in the agreement, no provisions thereof may be changed without the mutual consent of the parties thereto.

11. In the event that, during the term of an agreement, any requirements are established by any legislative enactments of the Russian Federation that would negatively affect the commercial results of the investor's activities under the agreement, the agreement shall be amended so as to ensure that the investor shall achieve the same commercial results that could have been achieved if the legislative provisions effective as of the date of entry in the agreement had been applied. Such amendments shall be made in accordance with such procedure as may be specified in the agreement.

12. In accordance with such proposals as may be submitted by the Ministry for Fuel and Energy of the Russian Federation and the Committee for Geology and the Use of Subsoil of the Russian Federation, after the proposals have been approved by the interested ministries and other governmental agencies of the Russian Federation and by the constituent entities of the Russian Federation, the Government of the Russian Federation shall ensure that such regulatory documents shall be prepared and adopted as may be necessary for the implementation of the provisions of this Decree.

13. This Decree shall be submitted for consideration to the Federal Assembly of the Russian Federation.

14. This Decree shall become effective as of the date of its signature.

President of the Russian Federation
B. Yeltsin

Указ Президента РФ от 24 декабря 1993 г. N 2285
"Вопросы соглашений о разделе продукции при пользовании недрами"

В целях создания правовых основ для привлечения российских и иностранных инвестиций в поиск, разведку и добычу минерального сырья на условиях соглашений о разделе продукции в период до вступления в действие законов Российской Федерации, регламентирующих порядок применения таких соглашений, и в соответствии с пунктами 2 и 3 Указа Президента Российской Федерации от 7 октября 1993 г. N 1598 "О правовом регулировании в период поэтапной конституционной реформы в Российской Федерации" постановляю:

1. Установить, что соглашение о разделе продукции (далее именуется - соглашение) является одной из форм договорных отношений государства с инвесторами - пользователями недр, которая предусматривает раздел добытого минерального сырья между договаривающимися сторонами, заменяющий взимание налогов, сборов, пошлин, в том числе таможенных, акцизов и других предусмотренных действующим законодательством обязательных платежей (далее именуются - налоги), за исключением налога на прибыль и платежей за право на пользование недрами, которые могут по согласованию сторон уплачиваться как в стоимостной, так и в натуральной форме.

2. Сторонами соглашения являются:

государство - Российская Федерация в лице Правительства Российской Федерации и органа исполнительной власти субъекта Российской Федерации, на территории которого расположен участок недр, или уполномоченных ими органов;

инвестор - юридическое лицо, в том числе иностранное, или группа указанных юридических лиц с созданием или без создания нового юридического лица в соответствии с законодательством Российской Федерации.

3. Государство может уполномочить контролируемое им предприятие на выполнение отдельных функций, связанных с контролем за соблюдением условий соглашения и (или) участием в его реализации.

4. Право на пользование недрами на условиях соглашения предоставляется инвестору в порядке, предусмотренном законодательством Российской Федерации и удостоверяется лицензией.

В случае когда инвестором является группа юридических лиц без создания нового юридического лица, лицензия может быть выдана одному из этих юридических лиц с указанием в лицензии, что он выступает от имени данной группы.

5. Соглашение определяет условия пользования участком недр, в том числе включает в себя специальные положения, устанавливающие порядок:

определения части добытого минерального сырья, в том числе ее предельного уровня, которая передается в собственность инвестора для возмещения его затрат на производство;

раздела между государством и инвестором добытого минерального сырья, за исключением платежей за право на пользование недрами и части добытого минерального сырья, передаваемой в собственность инвестору для возмещения его затрат на производство;

передачи государству принадлежащей ему по условиям соглашения части минерального сырья;

взимания налога на прибыль и платежей за право на пользование недрами.

6. Добытое минеральное сырье, являющееся по условиям соглашения долей государства, поступает в распоряжение уполномоченных им органов или предприятий.

Распределение части минерального сырья (или его стоимостного

эквивалента), полученной государством в результате раздела продукции, осуществляется на основе не являющихся частью соглашения специальных договоров между органами исполнительной власти Российской Федерации и субъектов Российской Федерации.

Распределение взимаемых налога на прибыль и платы за право на пользование недрами осуществляется в соответствии с действующим законодательством с зачислением их в соответствующие бюджеты.

7. Минеральное сырье, поступающее по условиям соглашения в собственность инвестора, может быть вывезено им из Российской Федерации в порядке, определенном для экспорта продукции собственного производства. При этом для предприятий, не имеющих права на безлицензионный вывоз продукции собственного производства за пределы Российской Федерации, в соглашении устанавливаются долгосрочные квоты на вывоз такого сырья.

8. Продукция производственно-технического назначения, ввозимая инвестором в Российскую Федерацию в рамках соглашения, освобождается в соответствии с пунктом 1 настоящего Указа от взимания налога на добавленную стоимость и таможенных пошлин.

9. Вновь созданные в ходе реализации соглашения основные фонды остаются в собственности инвестора, если иное не предусмотрено соглашением.

10. Положения соглашения сохраняют свою силу в течение всего срока его действия. Внесение изменений в соглашение допускается только по взаимному согласию сторон, если иной порядок не предусмотрен соглашением.

11. В случае если в течение срока действия соглашения законодательными актами Российской Федерации будут установлены нормы, ухудшающие коммерческие результаты деятельности инвестора в рамках соглашения, в него вносятся изменения, обеспечивающие инвестору коммерческие результаты, которые могли быть получены при применении норм законодательства, действовавших на момент заключения соглашения. Порядок внесения указанных изменений определяется соглашением.

12. Правительству Российской Федерации по представлению Министерства топлива и энергетики Российской Федерации, Комитета Российской Федерации по геологии и использованию недр, согласованному с заинтересованными министерствами и ведомствами Российской Федерации и субъектами Российской Федерации, обеспечить разработку и принятие нормативных документов, обеспечивающих реализацию норм настоящего Указа.

13. Внести настоящий Указ на рассмотрение Федерального Собрания Российской Федерации.

14. Настоящий Указ вступает в силу с момента подписания.

Президент Российской Федерации Б.Ельцин
Москва, Кремль
24 декабря 1993 года
N 2285

эквивалента), полученной государством в результате раздела продукции, осуществляется на основе не являющихся частью соглашения специальных договоров между органами исполнительной власти Российской Федерации и субъектов Российской Федерации.

Распределение взимаемых налога на прибыль и платы за право на пользование недрами осуществляется в соответствии с действующим законодательством с зачислением их в соответствующие бюджеты.

7. Минеральное сырье, поступающее по условиям соглашения в собственность инвестора, может быть вывезено им из Российской Федерации в порядке, определенном для экспорта продукции собственного производства. При этом для предприятий, не имеющих права на безлицензионный вывоз продукции собственного производства за пределы Российской Федерации, в соглашении устанавливаются долгосрочные квоты на вывоз такого сырья.

8. Продукция производственно-технического назначения, ввозимая инвестором в Российскую Федерацию в рамках соглашения, освобождается в соответствии с пунктом 1 настоящего Указа от взимания налога на добавленную стоимость и таможенных пошлин.

9. Вновь созданные в ходе реализации соглашения основные фонды остаются в собственности инвестора, если иное не предусмотрено соглашением.

1Ø. Положения соглашения сохраняют свою силу в течение всего срока его действия. Внесение изменений в соглашение допускается только по взаимному согласию сторон, если иной порядок не предусмотрен соглашением.

11. В случае если в течение срока действия соглашения законодательными актами Российской Федерации будут установлены нормы, ухудшающие коммерческие результаты деятельности инвестора в рамках соглашения, в него вносятся изменения, обеспечивающие инвестору коммерческие результаты, которые могли быть получены при применении норм законодательства, действовавших на момент заключения соглашения. Порядок внесения указанных изменений определяется соглашением.

12. Правительству Российской Федерации по представлению Министерства топлива и энергетики Российской Федерации, Комитета Российской Федерации по геологии и использованию недр, согласованному с заинтересованными министерствами и ведомствами Российской Федерации и субъектами Российской Федерации, обеспечить разработку и принятие нормативных документов, обеспечивающих реализацию норм настоящего Указа.

13. Внести настоящий Указ на рассмотрение Федерального Собрания Российской Федерации.

14. Настоящий Указ вступает в силу с момента подписания.

Президент Российской Федерации Б.Ельцин
Москва, Кремль
24 декабря 1993 года
N 2285

14. Sources

Argumenty i Fakty (Arguments and Facts - Moscow)
Conference Notes: The Exploration and Production of Oil and Gas in the Former Soviet Union, held in London, 13th - 14th June 1995
Bulletin of Legal and Commercial Information
Bulletin of Russian Petroleum & Mining
Der Spiegel (Hamburg)
Die Welt (Hamburg)
Economist
Ekonomika i Zhisn (Economy and Life - Moscow)
Energy Compass
Financial Times
Finansowyje Iswestija (Financial Iswestija - Moscow)
Foreign Trade
Frankfurter Allgemeine Zeitung
Gas Brief
Houston Journal of International Law
Interfax- Business Weekly
Interfax - Mining and Metals
International Herald Tribune
Iswestija (Moscow)
Journal of Energy and Natural Resources Law
Lloyd's List
Marine Policy
Moscow News
Nachrichten fur Aussenhandel
Nefte Compass - Weekly Publication on Oil and Gas in the FSU and Eastern Europe
Neft i Kapital (Gas and Finance - Moscow)
'Ocean Oil and Gas Drilling and the Law', P.N.Swan
Oil and Gas Journal
Oil and Gas Report
'Petroleum Economics and Offshore Mining Legislation', A.P.H. van Meurs
Petroleum Economist
Petroleum Review
Russian & Commonwealth Business Law Report
Russian Petroleum Investor
'The Economics of Soviet Oil and Gas', R.W. Campbell
'The Enigma of Soviet Petroleum', Marshall I. Goldman
'The Legal Regime of the Soviet Arctic Marine Areas', W.E. Butler
'Vneshniaya Torgovlia SSSR' (USSR Trade)
Wall Street Journal
'Western Technology and Soviet Economic Development', Anthony C. Sutton

ARCTIC OCEAN

THE NORTH CAPE TO UYEDINYÉNIYA ISLAND

INCLUDING THE BARENTS AND KARA SEAS

PRINCIPALLY FROM THE RUSSIAN GOVERNMENT CHARTS TO 1887.
With later corrections

All Heights are expressed in Feet above Mean High Water Springs.

SOUNDINGS IN FATHOMS

NATURAL SCALE 1:2,000,000 (at Lat. 71°30′)
Projection — Mercator

Magnetic Variation Curves are for 1990

The Magnetic Variation is shown in degrees, followed by the letter E or W, as appropriate, at certain positions on the curves. The annual change is expressed in minutes with the letter E or W and is given in brackets, immediately following the variation.

CAUTIONS

1. *This chart must be used with caution as the surveys from which it has been compiled are in many parts unperfect.*
2. *Certain lights, navigational aids and wrecks have been omitted from this chart; for details of these, the larger scale charts and appropriate Admiralty publications should be consulted.*
4. *Local Magnetic Anomalies are reported to exist in places on this chart other than those indicated. See larger scale charts and the Admiralty Sailing Directions.*

IALA Maritime Buoyage System — Region A (Red to port)

CURRENTS

For further information on ocean currents, see Admiralty Sailing Directions.

BRITISH UNITS — METRES

Feet	6	12	18	24	30	36	42	48	54	60
Fathoms	1	2	3	4	5	6	7	8	9	10
Feet										
1	0.3	2.1	3.9	5.8	7.6	9.4	11.2	13.1	14.9	16.7
2	0.6	2.4	4.3	6.1	7.9	9.7	11.6	13.4	15.2	17.0
3	0.9	2.7	4.6	6.4	8.2	10.1	11.9	13.7	15.5	17.3
4	1.2	3.0	4.9	6.7	8.5	10.4	12.2	14.0	15.8	17.7
5	1.5	3.3	5.2	7.0	8.8	10.7	12.5	14.3	16.2	18.0

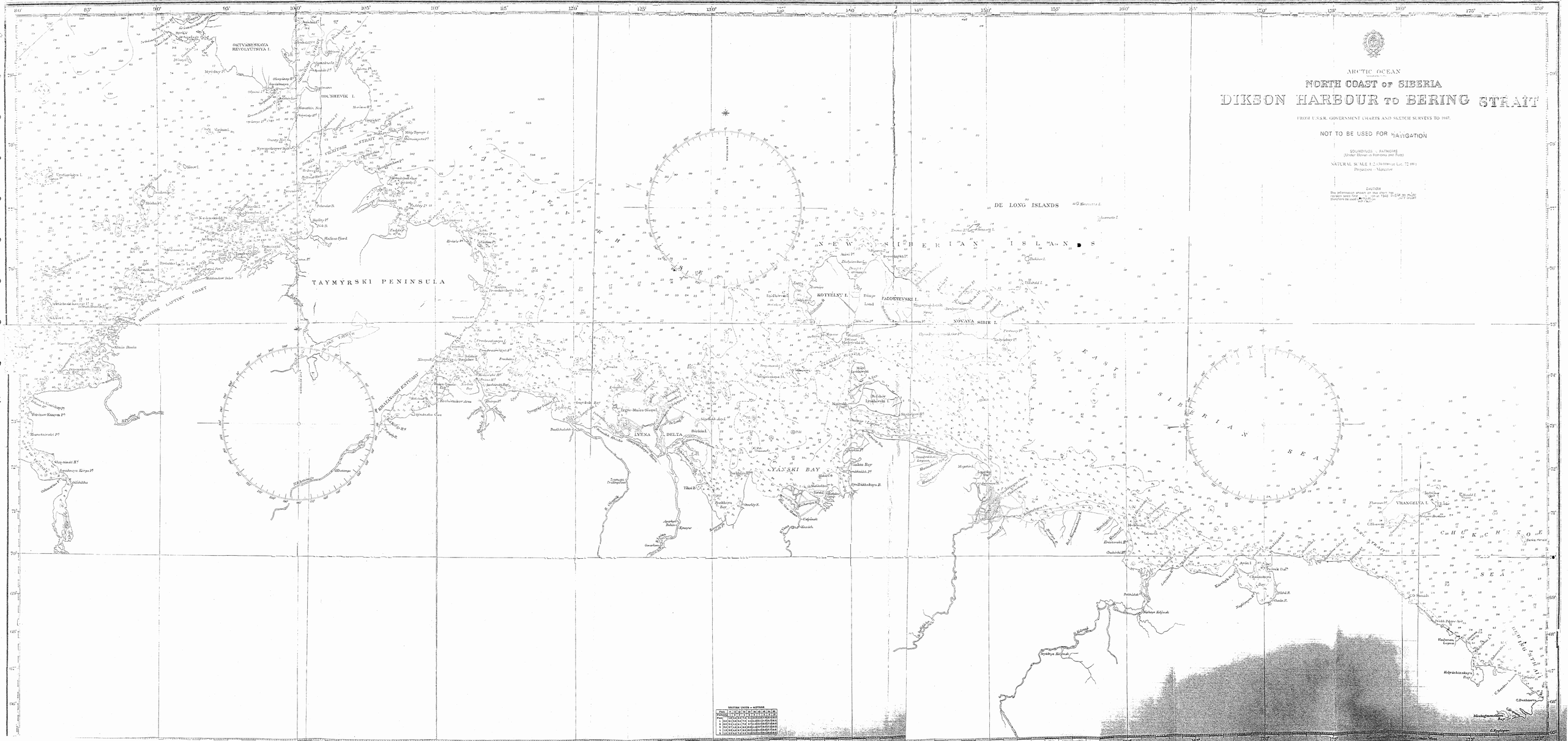
London. Published at the Admiralty, 10th June 1898; *under the Superintendence of* Rear-Admiral Sir W.J.L. Wharton, K.C.B., F.R.S., *Hydrographer.*

New Editions Mar 1903 ; Nov 1905, 11th May 1914, 24th Nov 1916, 22nd June 1920, 23rd May 1921, 21st March 1925, 7th May 1926, 16th May 1934, 18th August 1939, 2nd April 1993

Corrections 1953–1954–1955–1956–1957–1958–1959–1960–1961–1962–1963–1964–1965–1966–1967–1968–1969–1970–1971–1972–1973–1974–1975–1976–1977–1978–1979–1980–1981–1982–1983–1984–1985–1986–1987–1988–1989–1990–1991–1992–1993–1994–1995–1996–1997–1998–1999–2000–2001–2002–2003–2004–2005–2006–2007–2008–2009–2010–2011–2012–2013–2014–2015–2016–2017–2018–2019–2020–2021–2022–2023–2024–2025–2026–2027–2028

Engraved 1898
Enlarged 1961
Revised 1962
SET 1996

(SM 34 - 25 - 04)
A-2-96
A-2-96


ARCTIC OCEAN
NORTH COAST OF SIBERIA
DIKSON HARBOUR TO BERING STRAIT
FROM U.S.S.R. GOVERNMENT CHARTS AND SKETCH SURVEYS TO 1937.
NOT TO BE USED FOR NAVIGATION
SOUNDINGS IN FATHOMS
(Under Eleven in Fathoms and Feet)
NATURAL SCALE 1:2,500,000 (at Lat. 72 00)
Projection - Mercator
CAUTION
The information shown on this chart has not been tested from actual use at sea since 1942. This chart should therefore be used with caution
TAYMYRSKI PENINSULA
OKTYABRESKAYA REVOLYUTSIYA I.
BOLSHEVIK I.
DE LONG ISLANDS
NEW SIBERIAN ISLANDS
KOTELNY I.
FADDEYEVSKI I.
NOVAYA SIBIR I.
LENA DELTA
YANSKI BAY
EAST SIBERIAN SEA
VRANGEL'YA I.
CHUKCHI SEA
KRUSENSTERN STRAIT
LONG STRAIT
SHELAGSKIY SPIT
KOLYUCHINSKAYA BAY
METRIC UNITS — METRES