

Reaching Across the Communication Gulf: Reflections on the Challenges of Environmental Assistance Programs

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Abstract

Several experiences in international environmental cooperation and assistance are examined to understand how communication across differing traditions, legal systems, cultures, history, and language has impacted joint efforts to develop stronger environmental regimes. The article concludes that efforts to build more effective environmental protection regimes in support of both domestic and international environmental goals must become much smarter to overcome communication barriers and related impediments to effective joint activities. Different traditions can coexist and even work productively together where there is strong and equal motivation on both sides. But when these conditions are absent, the international partners need to find additional bridging tools and must work explicitly to identify genuinely common goals.

Key Words: regulatory policy, regulatory design, sustainable development

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Ruth Greenspan Bell*

Introduction

International bilateral communication, even between environmental professionals, surfaces not only differences in language, but more importantly the different assumptions, political cultures, and cultural habits that underpin and interlace language. Anthropologists and linguists who study communication say that: "two different languages aren't just alternative ways to talk about the same reality. Alternative languages carry with them a different theory of what reality in fact is. A shift from one language to another is a shift between two different worlds," where each speaker thinks his/her version is objective, "but they are both wrong."¹ This article draws from 10 years personal experience in numerous bilateral environmental assistance efforts to examine how communication has impeded or facilitated joint efforts to develop stronger environmental regimes.

The sources that provide illustrations include two joint Russian-U.S. efforts: a workshop that did not turn out as expected and a joint task force that achieved the narrow goals defined for it. These are contrasted with examples from joint work with Polish environmental enforcers and

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The author and RFF Fellow Kris Wernstedt were jointly responsible for planning and carrying out the Russian-U.S. workshop on public participation. The U.S. Environmental Protection Agency (EPA) team that implemented the Russian-U.S. Legal Task Force included the author, Laura Neuwirth, Deborah Dalton, and Richard Ossias. Susan Bromm, Tom Maslany, and the author were key members of the EPA team for the U.S.-Polish cooperative effort to create flexible environmental compliance mechanisms. The effort in Hungary and Slovenia is being jointly conducted with Jane Bloom Stewart, of New York University School of Law, and Magda Toth Nagy, of the Regional Environmental Center for Central and Eastern Europe in Budapest. The effort described in Thailand is being carried out under RFF auspices, by the author, RFF Fellows Thomas Beierle and Ramanan Laxminarayan, with Thai partner Suthawan Sathirathai.

¹ Michael Agar, *Language Shock/Understanding the Culture of Conversation*, William Morrow and company, New York 1994 at p.66.

preliminary evidence from ongoing projects in Thailand and in Hungary and Slovenia, all countries, which are developing new models of public participation in environmental decisionmaking.

Understanding how environmental professionals communicate is not a theoretical issue or concern, but rather an issue with new urgency. Environmental assistance 30 years ago was largely an altruistic drive to improve the environments and health of countries of the developing world, and the “havoc being wreaked” in the rivers and forest, soil, and seas.² As we have learned about the inter-connectedness of the globe’s environment, developed countries now have a more selfish motive: how to develop more effective global environmental partners to achieve the ambitious goals of the Kyoto Protocol and other international environmental agreements. Ultimately, achieving results rests on the success of domestic efforts in each of the signatory countries, many of which have historically weak domestic environmental institutions.³ These needs create a direct link and high stakes to the provision of environmental assistance.

Getting a handle on these issues is not easy and often requires subjective judgments – even guesses – about what people are thinking as they interact and communicate within assistance efforts. As Michael Agar has pointed out in *Language Shock/Understanding the Culture of Conversation*:⁴ “A piece of discourse can be looked at with different lenses, from different angles, from different distances, with different filters over the lens.” He goes on to state that communication in discourse depends on expectations, and the kinds of frameworks participants in discourse build to solve problems will depend on their differing expectations.

Despite substantial barriers to communication that arise out of language, history, and culture, the article concludes that these obstacles can be overcome, and that in any event environmental assistance and cooperation efforts are essential if progress is to be made on global environmental issues. Nevertheless, particularly when environmental progress requires basic changes in political attitudes, progress is likely to be slow, varying from country to country

² Jeffrey N. Shane, Environmental Law in the Developing Nations of Southeast Asia, in *Developing Economies and the Environment, The Southeast Asian Experience*, edited by Colin MacAndrews & Chia Lin Sien (McGraw-Hill Southeast Asia Series (Singapore 1979) at p. 45.

³ R. Greenspan Bell, "Signing a Climate Treaty is the Easy Part; Implementing and Enforcing Agreed-Upon Actions Pose Many Challenges," RFF's *Weathervane* web site: <http://www.weathervane.rff.org/pop/pop4/bell.html> December 1997. Reprinted in *Green Planet Blues: Environmental Politics from Stockholm to Rio*, Geoffrey Dabelko, Ken Conca and Michael Alberty. Eds. (Boulder, CO: Westview Press, 1995)

⁴ William Morrow and Company, Inc. (New York) 1994 at p. 161

depending on each country's experience with markets and participatory democracy. In these cases, efforts must be viewed as long-term investments.

Environmental Assistance and How it Works

Environmental cooperation and assistance efforts work through joint efforts of environmental professionals.⁵ Generally, these have been lawyer-to-lawyer or engineer-to-engineer efforts on the apparent assumption that these professionals will be using a relatively common language and working toward a jointly held goal. Thus, using Russia as an example, environmental economists from the United States find knowledgeable colleagues in Russia to co-design market-based systems and emissions trading schemes; environment ministries from the west collaborate with officials from the state committee for the environment in Russia to build stronger environmental institutions for the Russian Federation; Western nongovernmental organizations (NGOs) support Russian NGOs, and so on. Communication is adequate to solve specific tasks, for example, to prepare quantitative health risk assessments for highly polluted Russian cities. What is more problematic is whether, from an assistance point of view, such efforts translate into working programs to reduce pollution.

The Russian-U.S. Workshop on Public Participation

In fall 1999, RFF hosted a workshop for the Moscow-based Center for Russian Environmental Policy (the Center), a not-for-profit NGO.⁶ The results of the workshop well illustrate the dilemmas that arise when it becomes clear that communication about objectives, goals, and means is muddled at best.

A. Background

⁵ The funding vehicles include U.S. foreign assistance appropriations acts such as the SEED Act and the Freedom Support Act, and funding arranged or provided by the various multilateral assistance organizations such as the Global Environment Facility, World Bank, the Asian Development Bank, the European Union, foundations, and a number of individual countries. See Ruth Greenspan Bell, "EPA's International Assistance Efforts: Developing Effective Environmental Institutions and Partners," XXIV *Environmental Law Reporter, News & Analysis* (October, 1994)

⁶ The Center was founded by Alexey V. Yablokov, a marine biologist, with unusual environmental credentials in Russia. Yablokov held official positions in the Yeltsin government, as environmental advisor to the National Security Council, but more recently he has been an increasingly outspoken force for environmental reform. He has unique stature both within Russia and outside as an honest observer.

Under the direction of Vladimir M. Zakharov⁷ the Center undertook an effort to identify priorities to reverse the deteriorating environment of the Russian Federation.⁸ The priorities project hoped to influence official decisionmaking from outside government and from the perspective of a consensus-based process. Russian, and before that Soviet, policymaking has been almost entirely top-down, fashioned by a small group of scientific and technical experts. The Russian expert-driven process is efficient – little time is wasted on public process – but implementation is a significant problem.

The Center's recommendations contained in their priorities document were also prepared by experts, including leading environmental economists, lawyers, educators and psychologists. But the Center convened meetings with other Russian NGOs and used opportunities, such as the Second All-Russian Congress on Nature Protection and its own bulletin, *Towards a Sustainable Russia*, to distribute and stimulate discussion about drafts of its priority document. The Center sought foreign perspective through the comments of U.S. and U.K. experts on various draft documents.⁹ Thus, their process has been more open than, for example, legislative drafting efforts of the Russian government, but it is still mainly the product of experts seeking “correct” answers.

The consensus aspect of the priorities project seemed to be plowing new ground for Russia. The workshop was designed to push a little farther into this new territory, by providing additional perspectives on consensus and interest group processes, examining how interest group interactions work in the United States, and exploring the applicability of these models for the Russian context. It tried to ask whether the more intense and sometimes contentious public processes in the United States for environmental policy and regulatory development might

⁷ Zakharov is also a natural scientist by training and is employed in the same research institute as Yablokov.

⁸ The already poor quality of the Russian environment has declined during the last ten years of economic and political transition. Even the severe Russian economic downturn of the past few years has not produced a net gain for the environment. Indicators like male life expectancy show drops from 64 in 1989 to 60 in 1996. Americans who have drawn attention to these problems include Murray Feshbach and Alfred Friendly, Jr., *Ecocide in the USSR*, New York, Basic Books 1992, and D.J. Peterson, *Troubled Lands, The Legacy of Soviet Environmental Destruction*, Westview Press, Boulder, San Francisco & Oxford, 1993.

⁹ The priorities project began at the national level, and moved to a regional level. The results of the national effort were discussed at the Second All-Russian Congress for Environmental Protection, which took place in June 1999 in the city of Saratov. The prioritization effort receives financial support from a number of U.S. and U.K. foundations and assistance organizations, and it builds on the unique networks of the Center outside of Moscow.

provide some lessons for Russia, in the form of “buy in” from different interest groups that might increase the chances of implementation.

B. The Case Example

The workshop was built around a case study demonstrating stakeholder engagement. After consultations with Dr. Zakharov, who emphasized the weakness of Russian environmental regulation, the decision was made to focus on a largely voluntary program in the Chesapeake Bay region to vegetate buffer strips along the shores of the bay and its tributaries. The “riparian forest buffer” program reduces nutrient inflows to the bay and improves habitat quality.

The case example illustrates how issues were hammered out with disparate interest groups and how three jurisdictions – Maryland, Virginia, and Pennsylvania, with acknowledged differences in their government cultures and attitudes – were able to find constructive ways of working together, although they had no formal or legal obligation to do so. Russian government bodies with responsibility for environmental protection historically have had difficulties achieving their goals or even communicating with “power” ministries such as those that control industry. John Massey Stewart reports that at a Russian national and federation level there is no dialogue at all between the politically important Ministries of Finance and Economy and the environmental authorities, and that environmental issues are “completely out of sight on the agenda.”¹⁰

Half a dozen representatives from various levels of U.S. government and the not-for-profit sector involved in the establishment of the voluntary buffer program made presentations, and Russians were also invited to speak. Russian participants, selected by Dr. Zakharov, included scientists, representatives from NGOs and regional and local government agencies, a businessman, a lawyer, and elected officials from local legislatures.¹¹

¹⁰ John Massey Stewart, *Environment: Working With Russia, The Ups and Downs of International Environmental Collaboration* (Part I), Central European Review, Vol. 1, No. 12 (September 13, 1999) <http://www.ce-review.org/99/12/stewart12.html>. Also, “western and Russian respondents [to a survey (respondents are identified in parentheses below)] generally felt that State policy failed to adequately address Russia's environmental problems [for reasons including] ‘lack of infrastructure and commitment’ (Igor Chestin, World Wildlife Fund, Russian Programme Office), ‘poor intra- and inter-departmental communication’ (Jane Robertson Vernhes, UNESCO), ‘a lot of overlapping within the state structures, with no clear delineation of responsibilities’ (Eija Kiiskinen, OECD).”

¹¹ Participants were from Moscow, Kaliningrad, Khakasia and Voronezh.

Evaluating the workshop, we identified three main – albeit overlapping – areas where communication was weak. These are in the process of interchange; assumptions about the process of policy formation; and content of policy.

C. Lessons Learned

(1) The Process of Interchange/learning Tools and Communication Styles

Communication can falter over differences in the ways that issues are discussed or in the very tools for professional interchange and joint learning. The riparian forest buffer case example was chosen as a case study under the assumption that it would facilitate communication about stakeholder engagement. But early in the workshop, some participants indicated that they thought that RFF was specifically advocating the use of riparian forest buffer zones in Russia or was only speaking about how environmental protection takes place in the Chesapeake Bay.

If at least some of the Russian participants were unfamiliar with the use of case studies, they may have come away from the workshop thinking that the message was literally focused on the values of buffers in the Chesapeake, and very specifically, how they are implemented. There is no way to know whether the entire presentation was fundamentally flawed because it relied on an unfamiliar discussion device.

Communication also floundered around the issue of what the U.S. participants could offer the Russians. The Russians seemed to want the U.S. experts to tell them how to solve their environmental challenges – what particular technique or plan would “work,” suggesting a need for a technical fix. This emphasis on technical answers has been commented on elsewhere. Laurence Mee, former coordinator of the Global Environment Facility's Black Sea Environmental Project, has asked whether Russian priorities “stem from the way of thinking which has been in vogue [in Russia and the Soviet Union] for the last fifty years or so, which is the technological, “quick-fix” way of thinking.”¹²

Whatever the reason, the emphasis on process and interest groups was not satisfying for the Russians. Science appeared to them more reliable than the uncertainties of process and

¹² John Massey Stewart, *Environment: Working With Russia, The Ups and Downs of International Environmental Collaboration* (Part I). Mee also blamed western aid which “tends to reinforce the idea that everything can be fixed with technology, thus undermining efforts to change public attitudes.”

interest group engagement. In contrast, the Americans instinctively distrusted "answers" as misleading and contextual, believing that even correctly formulated and researched "answers" – including those that have worked in other countries – are worthless if there is no public acceptability for adopting them. Indeed, a U.S. colleague with long experience in Russia who read this paper in draft asked how assistance could better articulate “that the democratic process itself is the ‘new technology’ that is needed” in Russia to make rules that people will be willing to abide by. Thus, a workshop constructed to demonstrate the values of pragmatism and process in resolving environmental problems, not to offer specific prescriptions or programs for achieving particular environmental goals, proved something of a non-starter.

Finally, there is reason to believe that communication on substantive issues was impeded by hierarchical relationships within the Russian group. Veteran observers of Eastern Europe and Russia have commented on the long Russian tradition of being responsive to hierarchy and leaders, a tradition of favors, and a dynamic based on insiders and outsiders.¹³ Although the participants came from several disciplines and different parts of Russia, each had been selected for the journey (for some, their first visit to the United States) by Zakharov. In this dynamic, Zakharov, himself a very strong personality and one of the strongest English speakers from the Russian side, was the clear leader. At several critical junctures, his enthusiasm or lack of interest appeared to be very influential. Whether this impeded the receptivity of the Russian participants to the issues set out for them by the U.S. hosts is a matter for speculation.¹⁴

(2) How Assumptions about Differences in the Process of Policy Formation Affect Communication

The Russian thirst for answers illustrates a much deeper issue that impacts how Americans and Russians interact on environmental policy: differences between the policy

¹³ Historically, see Marquis de Custine, *Letters from Russia* (Penguin Books, London, translation published in 1991). A more contemporary view, but not dissimilar, is in Janine R. Wedel, *Collision and Collusion, The Strange Case of Western Aid to Eastern Europe 1989-1998*, a discussion of cliques and networks at Chapter 3; and Jerrold L. Schecter, *Russian Negotiating Behavior, Continuity and Transition*, discussing, for example, the authoritarian tradition in Russia, "The role of authority, the avoidance of risk, and the necessity for control are vital to understanding Russian negotiating behavior. They provide the context, the background, and the circumstances within which the specific issues on the table are negotiated, whether between two bargainers at an open market in Moscow or Russian and American diplomats in Geneva." At p. 22.

¹⁴ Perhaps, as a strong English speaker (but not the workshop translator), he was merely a nexus for communication, and for expressing Russian points of view.

formulation processes in the two countries. In contrast to the Russian's confidence in scientifically derived answers, the Americans on balance thought that solutions inevitably have to reflect compromise and what is publicly acceptable, of which science was only one of a set of decision factors. The Russian put greater faith in specific formulas and scientifically correct answers – preferring a "cook book." These differences formed a communication impasse as Russians pushed for answers and Americans resisted.

Where communication arguably was completely derailed was in the Russian's difficulty in accepting the basic premise of the workshop: that the public or – more importantly – people who did not have academic environmental expertise – non-experts – could play a legitimate role in policy formulation. When a U.S. participant said that other factors could be as important as science, some of the Russians bristled.¹⁵ Many came from a science background, which was a basis for their high prestige and privileged access to information that was not available to others in Soviet society. At minimum, this interchange suggested a cultural minefield of sensitivities that must be traversed whenever Russians and Americans sit down to compare experiences.

These assumptions may have played a role when RFF attempted to administer a two-question survey to the Russian participants. They were asked to rank the importance of legal requirements, scientific justification, views of local government, ability to implement, views of local public, fairness to other groups, views of local industry, reduction of risk, and cost of action in setting environmental requirements. The participants appeared to have a genuinely difficult time ranking and the exercise ended in confusion.

Perhaps the most interesting communication issue involved the art of compromise in the policy formation process. Compromise is the core of U.S. decisionmaking. The riparian buffer case example displayed compromises between three states; between interest groups; and between various levels of federal, state and local governments; all made in order to establish and carry out an environmental program to reduce nutrient run off to the Chesapeake Bay.

The Russians' experience with compromise is very different. Neither the Russian nor the Soviet attitude toward compromise has the positive halo that surrounds and rewards compromise in North America. The Russian word, literally "kompromis", is not a native word. It is not often used in Russian and never used in the positive sense of "let's solve this, so we'll each compromise." A prominent Russian human rights activist has said:

¹⁵ See, e.g., D.J. Peterson at p. 209

Compromise is a bad word in the Soviet Union ...[where] ideology reinforced cultural traditions. ...[T]raditionally ...a person should be ... principled, strong, honest. Ideology reinforces this with the notion of no compromise with the class enemy. To call something a principled, uncompromising position is a compliment. There is a belief in Russia [reinforced by Marxism/Leninism] that there is one Truth, and that you are supposed to try and achieve it, not compromise it.¹⁶

In the workshop, some Russians openly expressed disbelief that U.S. government officials really hammered out solutions with citizen groups or that U.S. government bodies listened as much as they did to the views of citizen groups¹⁷

Compromise and trust are connected issues, and trust is developed – and expressed – in different ways in different cultures. The U.S. participants assumed that strangers across the environmental spectrum could find ways to sit down and negotiate mutually acceptable outcomes. The participants in the riparian forest buffer zone effort came to the table with fundamental political and economic differences. Their trust developed in the context of working together.

In contrast, anthropologists say that for Eastern Europeans personal trust is a condition precedent to establishing a working relationship, making it difficult to accept that Chesapeake participants had cooperated successfully with people of diverse political opinions, lifestyles and tastes who they didn't know at all.¹⁸ Janine Wedel has pointed out that "Central and Eastern European groups often were unwilling to share information or otherwise cooperate with anyone who had not reached the status of personal friend."

As anthropologist Michael Agar points out, these are differences that are stuck deep within communication, within what he calls the "languaculture." With these assumptions coloring the exchanges in the workshop, it is likely that the fundamental message was lost.

¹⁶ Quoted in Smith, *Negotiating with the Soviets*, Bloomington, Indiana University Press, 1989 at p. 26 (we found the quote in Jerrold L. Schecter, *Russian Negotiating Behavior*, United States Institute of Peace Press, 1998 at p. 32. See also Eliza Klose, 12 *Surviving Together: A Quarterly on Grassroots Cooperation in Eurasia* 2 (Summer 1994).

¹⁷ Of course, there is some truth in this observation. Interacting with interest groups takes time and consumes resources. But stakeholder processes are so institutionalized in U.S. environmental practice that many now say that the public should be brought in when policy recommendations are actually being formulated, not merely to comment on already formulated proposals.

¹⁸ Janine R. Wedel, *Collision and Compromise: The Strange Case of Western Aid to Eastern Europe 1989-1998*, St. Martin's Press, 1998, at p. 111.

(3) Content of Policy

In addition to the issues related to compromise and trust, another area in which differences impact communication is in how the content of policy is formulated. Although one should be cautious about generalizations, Americans tend to emphasize pragmatism and incrementalism in policy change. More often, laws are formulated one by one and refined building on experience, and public acceptability; an example of this is the re-authorization process in which environmental laws are legislatively revisited on a scheduled basis.

In contrast, the Center's priority process reflected a Russian tradition of starting at the level of very broad directions. Thus, in its priorities document, the Center identified ambitious goals. Many of the Center's priorities call for reforms that would certainly improve the prospects for environmental gains. But they appear to be far beyond the power and capability of the environmental authorities and also represent a sharp reversal from current Russian practice.

One example is the Center's main recommendation, that natural resources and services, previously considered a free good in the Soviet Union's economic scheme, be assigned high values or prices to discourage their use and related impacts such as loss of biodiversity and environmental damage. The goal is admirable,¹⁹ but from an outsider's point of view, the Russian circumstances do not seem propitious for reaching it. The suggestion marks a massive change from the status quo, without any suggestion that there is leadership in Russia that can or is willing to pursue this agenda.²⁰ Moreover, insidious Russian corruption in the distribution of natural resources in Russia is the "gorilla in the closet."²¹ From a U.S. point of view, failure to

¹⁹ Although interestingly, the goal suggests that the Russians still believe that some entity rather than the market assigns values or prices.

²⁰ The Ministry of Environmental Protection and Natural Resources of the Russian Federation has always been weak. It was downgraded in 1996 to a State Committee on Environmental Protection, and the responsibilities for natural resources moved to a separate ministry that was abolished under Putin. John Massey Stewart, *Environment: Working With Russia, The Ups and Downs of International Environmental Collaboration*, footnote 5, quotes Alexey Yablakov as saying, "One gets the impression that it [the State Committee on the Environment] is just treading water. It adopts a whole load of good programmes on lead, on dioxins - but doesn't carry them through. Not even a quarter of them come to fruition, less than a tenth do."

²¹ Corruption is so engrained and accepted that the *New York Times* reported - as an example of an encouraging sign in the appointment of the then- new president of Russia Vladimir Putin - about a ceremonial meeting between Putin and the federal Railroads Ministry. In the middle of a meeting, Putin suddenly asked, in an "icy" tone, three unexpected questions: why had the railroads "beseeched" the Kremlin for money when certain customers got special shipping discounts? Was it not odd that the ministry had granted certain unnamed people the rights to collect a mountain of unpaid freight bills? And why was the ministry buying rails from Japan when Russia's steel mills were

mention such practicalities or to offer solutions is a fatal flaw for policy recommendations. Perhaps Russian traditions of imperial and Soviet decrees encourage a belief in sweeping recommendations.²² The important point is how experience in the two systems influences starting points and reactions.

D. Differing Perceptions of Two Workshop Participants

Two participants, Zakharov from the Russian side and American Eliza Klose, were asked to evaluate the interaction.²³ Both are bilingual, so they each had the advantage of hearing comments and contributions without the filter of translation. Both have extensive experience in the other's country.²⁴ The contrast in their remarks illustrates some of the difficulties of policy exchange.

Zakharov was frustrated by the emphasis on process. He did not think it was important to understand the political and bureaucratic institutions that supported environmental protection in the United States, and he viewed environmental protection as more a matter of finding validated solutions and inserting them. Thus, he wanted more information about specific "concrete measures" such as ecological insurance schemes and pollution charges, but not about what might motivate people to purchase insurance or the role of the U.S. courts in determining and enforcing liability.

Zakharov expressed a belief that only experts could understand complex environmental issues. His view of communication with the public required more emphasis on "simple" ideas, because "decisionmakers and the broader public will not understand more intricate and detailed approaches."

idle and offering fire-sale prices? (*What Putin's Rule Portends for Russia* by Michael Wines, January 1, 2000, Section 1; p. 6; Column 1)

²² "... Russians have historically relied on government for security, not for justice. Rule in pre-communist Russia was by imperial decree, and the tsar's will was not subject to law." p. 21, *Russian Negotiating Behavior Continuity and Transition*, Jerrold L. Schecter

²³ Both provided comments with the intent that they would be published.

²⁴ Zakharov has visited the United States and worked with Americans for a number of years. Klose, the Executive Director of the Initiative for Social Action and Renewal in Eurasia (ISAR), lived in Russia for four years and continues to work there and in other parts of the former Soviet Union.

His most surprising comment clearly marked the dimensions of the cultural divide. Zakharov thought there should be an emphasis on "new" ideas, *principally* for tactical reasons — essentially environmental decisionmaking as guerilla warfare.²⁵ “Only new ideas and approaches can be implemented easily and quickly in Russia. In our heavily entrenched bureaucratic system, groups are already organized to stop all those standard ideas that have been tossed about for years. New ideas may be more attractive, but most importantly they will not yet have generated organized resistance.”

Klose saw signs of progress in U.S./Russian environmental interactions — including the "real mix" of Russian participants, including some who had been before to the United States “making it easier to concentrate on the substance of the workshop” — but identified major communication gaps. For example, the Russian participants had great difficulty believing that government agencies and NGOs would work together voluntarily. She quoted a Russian participant who asked a representative from the U.S. Environmental Protection Agency (EPA), “Okay, off the record, would you really work with NGOs if you didn’t have to?”

She noted that only the NGO representative from Kaliningrad, also a member of the local *duma*, or parliament, really seemed to take citizen participation seriously. “The scientists in the group, though often members of an NGO themselves, saw local NGOs primarily as protestors, not constructive participants.”

Klose also noted with concern the Russian participants’ emphasis on learning how to gain greater access to Western resources, and their seeming belief that attracting money and other resources was more critical to addressing environmental problems than attracting public support. Finally, she thought Russian attitudes might be too entrenched to absorb the lessons of the workshop: “As I listened and acknowledged the deep differences, I ... regretted ... that the Soviet legacy of mistrust of and condescension toward the average citizen so clearly limits” Russian consideration of the benefits of public participation.

²⁵ Zakharov did acknowledge "differences in mentality between our two cultures. We view so many things differently, from the role of management up to the meaning of policy. I personally believe that the difference between the Russian mentality and the mentality of the rest of humanity is not so dramatic, but it nonetheless still challenges our cooperation."

The Russian-U.S. Legal Task Force

Under the Freedom Support Act, EPA established a Russian-U.S. task force, hoping to stimulate a different and more practical way of thinking about environmental law in Russia.²⁶ Russian environmental law drafting was understood to be a somewhat academic exercise handled by scholars extremely knowledgeable about environmental laws in the west. Because of the nature of Russian environmental practice, however, their responsibilities largely ended when drafting was completed. There was no environmental bar and environmental practitioners were largely the prosecutors who brought criminal enforcement actions.

Recognizing the many skilled Russian environmental law drafters and the significant gaps in environmental law implementation, EPA established a legal task force designed to draw Russian lawyers more actively into the process of environmental regulation, by encouraging them to analyze and address specific proposed regulatory activities in the context of Russian laws. The task force served as a kind of legal counsel for two EPA-sponsored, Agency for International Development-funded environmental assistance projects in Russia: the Volgograd air quality project and a water quality project based in the Tver region, north of Moscow. Through this effort, EPA hoped to introduce a more concrete basis for the job of environmental law drafting, and to develop a wider cadre of environmental law practitioners.

The task force was predicated on practical problem solving: hearing the goals of the clients, researching the applicable Russian environmental law, and developing a legal framework through which the clients could achieve their goals. Thus, the task force was meant as a “roll up your sleeves,” problem solving kind of experience, not a forum for speeches or formal presentations.

As it tried to establish the requisite informality, the task force encountered a major obstacle. This was about differing understandings of how senior Russian experts worked in settings such as ours. For example, in the first Moscow meeting, a senior environmental law specialist insisted on making a major presentation to the assembled group. After extended internal discussions, the EPA personnel decided that he was an essential person if the effort were to succeed, and provided a limited time for his presentation. His presentation was a relatively

²⁶ A more complete report is contained in Ruth Greenspan Bell, “EPA’s International Assistance Efforts: Developing Effective Environmental Institutions and Partners,” XXIV *Environmental Law Reporter, News & Analysis* (October 1994).

formal and somewhat abstract exposition on Russian water law, which only touched tangentially on the particular issues before the task force. But at the end of the presentation, the specialist plunged into the task force format, brainstorming and providing suggestions that were added to others on a flip chart. We could only surmise that his intense interest in making the presentation was somehow related to sensitivity about his senior status.

A point of unexpected Russian sensitivity came up when EPA introduced the law drafters to one of the specific tasks before the task force. After extensive consultation, the Volgograd “client” (EPA and Volgograd air enforcement specialists) had decided to concentrate its efforts on introducing “visible emissions” testing (otherwise known as “smoke reading”) into Volgograd enforcement practices. Smoke reading avoids the need for in-plant entries and reduces the need for monitoring equipment and for internal plant inspections. Typically Russian inspectors must announce their intent to inspect a plant before being allowed to enter, thus it is harder to catch illegal behavior. Smoke reading can be done from outside the plant, by inspectors who are properly trained to “read” smoke emissions and to bring enforcement actions on this basis. Moreover, anyone – official employees of the inspectorate, NGOs, and other community members – can be trained to stand outside the plant and read smoke emissions.

Immediately as the goals of the client were described, one very senior, distinguished Russian environmental law drafter became visibly disturbed. His concerns had to be coaxed out of him, but clearly demonstrated why he was annoyed. He described smoke reading as a technique that had been developed in the United Kingdom in the 1950s and strongly suggested his view that this was an outdated technology, discarded in the west, and presumably foisted on Russia by an arrogant and condescending United States. His remarks displayed a cultural sensitivity as well as his extensive academic knowledge of the environmental laws of the west. The situation was saved by the intervention of a senior EPA air engineer, who was able authoritatively to say that smoke reading is used routinely in the United States as the basis of 60-70% of air enforcement cases brought in the western United States.

Another more easily anticipated legal-culture issue came up in the context of Russian evidentiary rules. A major effort of the task force was centered on how smoke reading might work in the context of evidentiary rules governing enforcement actions in Russia. The Russian rules of evidence require a great deal more corroboration of violations in a court action than do the rules of the U.S. system, displaying a deep-rooted Russian concern about the fairness of Russian enforcement bodies. A considerable part of the legal research of the task force was directed to finding appropriate Russian law solutions to this problem.

An important tool that the task force used to identify and surface differences in culture and communication was to use two facilitators in meetings. One was an American with a strong international and environmental background; the other was a bilingual Russian, who fortunately had been an environmental law expert before she became one of the first in Russia with formal facilitation and conflict management skills. The job of each in meetings was to be a “third ear,” listening carefully for communication lapses. Although expensive, this proved to be the best possible investment in assuring that the “languaculture” did not trip us up.

Communication improved over the course of the project, but it is difficult to say what lasting results were left. The task force achieved a narrow purpose – it provided legal research to the client projects that enabled those projects to achieve their goals within the constraints of the Russian legal system. But EPA was interested in a more ambitious goal – changing attitudes. Regarding this goal, there is one anecdote to report. The senior environmental specialist who insisted on making a formal presentation was part of a Russian delegation to a workshop held in the U.S. several years later. In his remarks in the U.S. workshop, the specialist emphasized that perfectly drafted laws were useless if they were not capable of implementation. Unfortunately, this important insight comes in the context of a Russia in which environmental laws have even less importance than they did in the early 1990s.²⁷

U.S.–Polish Cooperative Effort to Create Flexible Environmental Compliance Mechanisms

A joint U.S.-Polish effort illustrates a situation in which there was either a greater meeting of the minds between project participants or, because of the in-country motivation for change, communication was adequate. The assistance could be deemed a success because it resulted in change, although the path toward change had many unexpected twists and turns.

In 1992, EPA and the Polish environmental agency established a cooperative effort to reform Poland’s compliance and enforcement system.²⁸ Early in the effort, the Polish team, which consisted of environmental enforcement officials and lawyers from the national and the district (voivodship) level, came to the United States for an EPA-organized study tour. The level

²⁷ See footnote 21

²⁸ Details about this project are found in Ruth Greenspan Bell and Susan E. Bromm, “Lessons Learned in the Transfer of U.S.-Generated Environmental Compliance Tools: Compliance Schedules for Poland,” XXVII *Environmental Law Reporter, News & Analysis* (June, 1997)

of Polish commitment is demonstrated by the fact that the time and transportation of the Polish team were supported by Polish government funds.

What distinguished the Polish effort from the Russian workshop was that the Polish team swiftly developed its own mission and over time used the opportunities for its own purposes. After learning about how enforcement officials in the United States use flexible compliance instruments, the Polish enforcement officials wanted to see whether Polish versions could be constructed, consistent with their own legal traditions and challenges.²⁹ In doing so, they assumed that Polish environmental regulation and enforcement was moving from the theoretical to something real.³⁰ Although the team had a strong and quite determined leader, the members of the team appeared to have been selected for their specific contributions to the project, rather than for political or social reasons, although they also seemed to be well-acquainted with each other.

Thus, the U.S. team organized the meetings for the study tour, and prepared U.S. national, state, and local government officials so that they would understand what the Poles wanted to learn. But the Polish team and its experts came armed with specific questions. Each evening that they were in the United States, the Polish team caucused to discuss what they had learned that day, and to work together to write a proposal for action in Poland. When they left the United States, they carried a draft document.

In the beginning, there was a sense that the U.S. team was steering the project, largely based on its greater expertise in environmental enforcement and compliance. As the project developed, however, the U.S. team's role subtly shifted, becoming, *de facto*, advisors to the project who were brought in to answer specific questions, to provide targeted training, or, as detailed below, to facilitate access to specific Polish interest groups. Increasingly, communication was dictated by Polish needs. For example, the Polish team hired a legal team from a Łódź university to examine and make recommendations on how flexible compliance negotiations could be made to work in the Polish civil law system.

²⁹ The process they developed, called "Compliance Adjustment Period" requires a violating facility to submit an application with proposed controls and schedules. A negotiation process is conducted by a set team. The process is governed by written procedures, visible to the public, and with accountability by officials signing the agreement

³⁰ Information about this evolution is contained in Ruth Greenspan Bell, "Industrial Privatization and the Environment in Poland," XXII *Environmental Law Reporter, News & Analysis* (February, 1992) and in Daniel H. Cole, *Instituting Environmental Protection, From Red to Green in Poland* (St. Martin's Press, Inc. New York, 1998)

The Polish attitudes toward public information and public outreach were also distinctly different than the Russian attitude. In part, this difference reflected a longer-term effort, compared to the partnership between RFF and the Russian Center, which spanned only two years and infrequent contact. The U.S.-Polish situation allowed time for attitudes on both sides to evolve as insights grew. Over time, the Polish team developed an understanding of the need to develop public and interest group support in Poland for the proposed changes. About the mid-point of the 6-year project, the U.S. team began to see that an increasing amount of its time in Poland was scheduled with meetings with important interest groups – meetings that were set up by the Polish team. In one visit, for example, the EPA team was brought to meetings with newly-developed trade associations convened at the Ministry of Industry; the chair of the Polish Parliament's Ecological Committee; officials from district environmental enforcement bodies; officials – particularly the skeptical legal staff – from within the Environment Ministry; and representatives from various environmental NGOs, comparable to the U.S. public interest groups who play an important role in environmental decisionmaking.

In the first of these meetings, the Polish environmental NGOs seemed to find the situation awkward and unfamiliar; they had little experience meeting with government officials about proposed legislation. There was a marked change over the years of the project, with increasingly confident and less diffident NGO members, and increasingly engaged public officials who understood why they needed support for the massive changes they were recommending.

A more subtle issue was suggested by the way our principal Polish counterpart, someone high in the ranks of the Polish environmental enforcement agency, would introduce the U.S. team in meetings as advisors and as a resource. He was extremely careful to make it clear that the Polish team was not interested in directly incorporating U.S. solutions into a European situation. Clearly, although it was never articulated, he was dealing with – perhaps preempting – Polish sensitivity to U.S. environmental hegemony, and possibly also implicitly underlining the Polish goal of joining the European Union.

The U.S. team also lost track of the project from time to time. Despite a commitment to stay in contact and telephone conference calls, there would be unexplained periods of silence on the Polish side. It began to be clear inferentially that some of these silences came in periods in which political or personnel changes in the Polish government required the Polish partners to build new constituencies for their new ideas.

Although some cultural and institutional issues may have been buried or implied or were overtaken by the momentum of the project, some were explicitly surfaced for discussion and resolution.³¹ It was necessary to craft compliance tools so that they could work in Poland's continental European civil law system. The common reference point for the U.S. and Polish teams was an understanding that Poland was quickly moving back to a law-based society, something the U.S. team could easily understand. But the legal traditions of the two countries are very different and required considerable mutual understanding in order for the two teams to work together toward a common goal. It was also important for the U.S. team to understand Polish concern about the specific ways in which regulatory discretion has fertilized corruption, particularly in the communist period, and to help them find ways to bound behavior. Once understood, solutions from the perspective of U.S. practice could be offered. In this sense, there were great similarities between the legal-culture issues surfaced in this project and in the Russian legal task force.

By 1998, responsibility for the project had shifted entirely into Polish hands; the U.S. role was principally directed to conduct a train-the-trainer course in compliance negotiations. An indicator of project success came in the form of a May 7, 1998 report from Reuters. Teresa Warchalowska, the Chief Polish environmental inspector, announced that Polish environmental authorities were launching a scheme, developed with the EPA, to help firms get off an embarrassing list of the country's worst polluters by agreeing to an adjustment program that would bring the firms into environmental compliance. Polish provincial governors signed four pilot negotiated agreements, and sent letters to other facilities on the list of 80 worst violators in Poland inviting them to consider participating in the Compliance Abatement Period process based on the success of the initial four pilots. Legal changes to the Polish environmental law to allow negotiations of control plans and compliance schedules had advanced as far as inter-ministry review.³²

It would be nice to end on this high point, but afterward, doubt was raised about the viability of the effort. The Polish champion for flexible compliance tools was moved from his position in the Inspectorate to a different position in the Environment Ministry, and the project

³¹ A detailed discussion of many of these issues and how they were solved is in Bell and Bromm (see footnote 27).

³² Negotiated compliance schedules for industry were reported as a *fait accompli* in Halina Szejnwald Brown, David Angel, and Patrick Derr, *Environmental Reforms in Poland: A Case for Cautious Optimism*, 40 *Environment* 1 (January/February 1998)

lost its strong champion. The U.S. team has heard that the results of the project have been picked up at the voivoda level, and the national level is quiet. Once again, silence is a veil.

Developing Institutions to Support Public Participation in Thailand and in Hungary and Slovenia

Two efforts currently underway are designed to work with country partners to develop better mechanisms for public participation and transparency in environmental governance. A joint project in Thailand with Thai counterparts will develop and examine case studies to help provide a roadmap for better processes for public involvement in environmental decisionmaking. The second, in partnership with two Central European countries, Hungary and Slovenia, will develop institutions to implement government commitments to increasing public access to environmental information in the hands of government, thereby increasing government transparency and strengthening public participation in environmental decisionmaking.

While both projects are in their early stages, and it is too early to say whether the efforts will fall closer to the Russian or the Polish example, a couple of interesting points can be made.

The Thai project began at the initiative of Thai researchers, who are responding to an opportunity embedded in the 1997 Thai constitution opening the door to greater public involvement in government decisionmaking. Thus, the U.S. role appears to be seen from the beginning principally as a resource, a way to gain comparative perspective from U.S. experience and access to experience in the countries in economic and political transition.

The first activity was a workshop in Bangkok, held in Thai, in which Thai experts presented their research and assessment about current practices and deficiencies in Thailand. U.S. experts presented four papers, three of which provided background on U.S. practices and on the rationale for public participation. The fourth international paper presented lessons from specific public participation efforts in India.³³ Although the presentations were somewhat formal, a microphone on the floor of the meeting room facilitated questions and statements from the numerous NGOs, academics, government officials, assistance bodies, and others attending the workshop, who expressed opinions and views. Thus, Thai concerns were front and center.

³³ For a short report on this meeting, see 139 *Resources* 6 (Spring 2000), also found at http://www.rff.org/resources_archive/2000.htm

The second phase is under development, but will involve case studies designed to examine existing practices and develop options for change. The results are expected to be influential in the ongoing policy reform process in Thailand because communication with decisionmakers has been part from the beginning.

The Hungarian/Slovenian effort began at the initiative of two U.S. institutions (RFF and NYU Law School) and the Regional Environmental Center for Central and Eastern Europe. It builds on two commitments by Hungary and Slovenia: their participation in the Aarhus Convention, and even more importantly, their strong desire to join the European Union. The Aarhus Convention is a UN-ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters that established principles for public access to environmental information and public participation in environmental decisionmaking. Thus, the project starts with considerable “buy-in” and internal motivation.

The first in-region meetings were organized by the consortium, and discussions were guided by commissioned research on existing laws and practices. The meetings were conducted in English – a common language for Hungarians and Slovenians – which made it easier for U.S. participation, but more difficult for regional facility. Symbolically (but not necessarily anticipated by the organizing institutions), the momentum of the meeting shifted on the afternoon of the second day of in-region meetings, when each country held its own “native language” meetings to discuss a plan of action. After sessions, each group came back with detailed country plans, memorialized on flip charts. These will essentially guide the future progress of the project.

These experiences, in which ownership of the projects is in the countries where change is being planned, seem to bode well for the success of both projects.

Lessons for Future Environmental Assistance Efforts

Are the real differences between environmental professionals so great that we should abandon environmental assistance and cooperation with countries with very different traditions? The snapshots in this paper suggest that different traditions can coexist and even work productively together if the motivation on both sides is more or less equal. This does not mean identical motivations, but a truly bi-lateral relationship. In the most motivated situations, there will also be adequate motivation to understand how the other side is thinking.

Where motivation does not exist, additional tools to bridge communication must be added, and there must be some sort of explicit effort to identify genuinely common goals.

Assistance that simply throws professionals from different cultures together without helping them understand the context in which each functions is less likely to effect change.

Clearly, there must be greater recognition that environmental specialists work within the confines of institutions, cultures, traditions, legal systems, and language, and that few technical fixes work independent of the social and political context.³⁴ One step toward mastering this situation is to be more specific about what it takes to really work together.

When the “languaculture” issue is confronted head-on, specialists can be added to the assistance team to fill these gaps. The effectiveness of dialogue can be increased by broadening beyond professionals only in the environment field to include other specialists in communication. Bicultural/bilingual facilitators can provide the “third ear” that listens for communication failures, whether linguistic, political, or social.

Continued contacts and exposure, rather than “one-off” assistance relationships also help. Beyond developing relationships of personal trust over time, the friendships that develop allow a different level of communication and understanding. A strong local partner is a good start, but by no means a panacea. The ideal situation is to actually experience conditions in the partner country by living there in non-optimal conditions, using the local phones and shopping in the local stores to understand how local institutions work in reality. When this is not possible, it is possible to learn something about these issues, but it requires looking beyond the technical environmental literature. Any effort like this requires a long-term commitment from all parties and the recognition that what is involved is joint learning.

Increasing awareness of the many activities that countries undertake within their own borders that impact the global environment demands concerted action. But effective international agreements require more adept local environmental protection institutions. Assistance to build these institutions must become much smarter in order to overcome the differences in “languaculture” that create communication barriers and impediments to effective joint activities. The effort to strengthen environmental action around the world is very similar to the subject of strengthening human rights. Both are powerful and universal ideas. But in both cases, the people who do this work are planting seeds that may take long and uncertain periods to germinate.

³⁴ See footnote 16.