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ON
THE SOVIET DOCTRINE AND
PRACTICE WITH RESPECT TO
ARBITRAL PROCEDURE

(Prepared by the Secretariat)

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SOVIET DOCTRINE AND PRACTICE WITH RESPECT TO ARBITRAL PROCEDURE

I. THE TEXT WRITERS

Two post-war Soviet text-books on international law state the U.S.S.R.'s position with respect to arbitration.

The more comprehensive of the two texts, published in 1947 by the Institute of Law of the Academy of Sciences of the U.S.S.R. under the general editorship of Professor V. N. Durdenevskii and Judge S. B. Krylov, and issued by the Ministry of Higher Education of the U.S.S.R. as a text-book for Juridical Institutes and Faculties, states the Soviet position briefly, as follows (in translation from the Russian):

Position of the U.S.S.R. with relation
to questions of arbitration.

9. The U.S.S.R. and International Arbitration. The U.S.S.R., taking into consideration this character of international justice, has been reserved toward international arbitration both as to its permanent Hague forms and as to ad hoc courts; not shunning in many cases settlement through arbitration of disputes concerning questions of private international law, the U.S.S.R. prefers for inter-governmental disputes related to political matters the procedure of diplomatic action and conciliatory commissions.

(Institut Prava Akademii Nauk S.S.S.R., Mezhdunarodnoe Pravo, Moscow, 1947, p. 475).

The paragraph is preceded by a seven-page history of arbitration. It is to this historical sketch that the authors refer when they state that the U.S.S.R. has taken into consideration "this character" of international justice. The authors' conclusions, as a result of their historical presentation, are that throughout its life the Permanent Court of Arbitration at The Hague has heard cases of a rather secondary importance, while the Permanent Court of International Justice was not the recipient of a single really important dispute during its existence.

The decisions of the Permanent Court of International Justice are found to have been characterized generally by protection of the interests of the great powers which directed the League of Nations and of the powers of the Little Entente. Only in those cases in which the interests of the great powers went separate ways were decisions found to have been registered against one of them. It is remarked that the claims of minorities in Poland, Rumania and elsewhere were systematically dismissed on the ground of lack of jurisdiction or lack of /definiteness.

definiteness. The Second World War is held to have proved Lenin correct when he said that no international court of arbitration could, of itself, save mankind from new imperialist wars (Lenin, Collected Works, Second and Third Russian editions, Vol. 25, p. 281). It is noted that the U.S.S.R. has not adhered to the Conventions for the Pacific Settlement of International Disputes, signed at The Hague.

A nearly similar attitude is expressed in the other text, written by Professor F. I. Kozhevnikov and bearing the note that it has been approved by the All-Union Juridical Part-time Institute of the Ministry of Justice of the U.S.S.R. as a study aid for part-time students. Soviet and Russian Imperial practice, the latter of which is not mentioned at all in the other text-book discussed above, is sketched in brief. Not all of the same conclusions are reached, however. The Permanent Court of Arbitration is thought to have decided a considerable number of "rather important cases, as for example that of 11 November 1912 compensating Russian subjects suffering losses during the Russo-Turkish War of 1877-1878 and that of 6 May 1913, on the detaining by the Italians of the French Mail Steamship 'Carthage'." (p. 202). It is also remarked (in translation from the Russian):

It must be emphasized that Russia exerted serious affirmative influence on the inculcation of the idea of a court of arbitration in international practice (p. 198). --- One can affirm boldly that in the development of an international legal procedure and court system Russia unquestionably played a leading role (p. 199).

(F. I. Kozhevnikov, Uchebnoe Posobie po Mezhdunarodnomu Publichnomu Pravu. /Ocherki/, Moscow, 1947).

The relation between the participation in international arbitration by the Imperial Russian Government and its foreign policy is set forth as follows:

It goes without saying that it would be very naive to overestimate from this fact as well as from others, the sincerity for pacifism on the part of pre-revolutionary Russia and of bourgeois diplomacy in general in these times (p. 199).

The U.S.S.R.'s attitude toward arbitration at the present time is set forth in brief, but in greater detail than in the other volume, as follows:

Soviet diplomacy has not repudiated in principle under all circumstances the institution of arbitration /arbitrazh/ as one of the peaceful means of settling international disputes. On the contrary, the Soviet Government thinks it fully possible (under certain circumstances) to apply even this procedure for settling peacefully disputes arising between the Soviet state and individual capitalist states.

/Thus, the

Thus, the Soviet Government agreed at the meeting of the Executive Committee of the Moscow Conference for Reduction of Armaments of 8 December 1922 to accept a draft convention on non-aggression and arbitration /treteiskoe razbiratel'stvo/. The parties to this convention agreed that if a dispute arose among them concerning questions already decided by the peace treaties, or concerning territorial questions, the question giving rise to the dispute would be referred to arbitration /treteiskoe razbiratel'stvo/ in the event that it was found to be impossible to settle the dispute through diplomatic channels.

In entering the League of Nations in 1934 the U.S.S.R. likewise accepted in general the principle of arbitration /arbitrazh/ provided for in the Covenant of that organization. The U.S.S.R., however, in this case made a substantial reservation to this effect -- that arbitration /treteiskoe razbiratel'stvo/ or judicial settlement, provided for by Articles 12 and 13 of the Covenant of the League, could not be applied to conflicts relating to questions which had arisen before its entrance into the League.

Finally, participation of the U.S.S.R. in the United Nations Organization once again confirms Soviet diplomacy's positive approach in principle to arbitration /arbitrazh/.

It goes without saying that under all circumstances there will remain unchanged that general principle of Soviet foreign policy, under which Soviet diplomacy will always seek to obtain such a bench for the arbitration /treteiskie/ tribunals or for other similar agencies as will guarantee to the U.S.S.R. the same measure of disinterestedness and justice as is assured other states (p. 204).

Both of the volumes, from which the quotations have been selected, have been seriously criticized by the Director of the Institute of Law of the Academy of Sciences, Professor Eugene A. Korovin (see his review translated in part in American Journal of International Law, Vol. 43 (1949), pp. 387-389). Professor Korovin, who has long been one of the most noted of Soviet writers on international law, criticizes his colleagues for failing to portray the Soviet position toward international law with sufficient patriotic pathos, and, in particular, for failing to explain the Soviet feeling that some states are trying to subordinate the Security Council of the United Nations to the International Court of Justice. He does not, however, comment critically on the treatment of the subject of arbitration in either volume. Similar criticism of United States and British attitudes toward the International Court of Justice has been made by Foreign Minister Vyshinsky (see his article "International Law and International Organization" (in Russian), Sovetskoe Gosudarstvo i Pravo, (1948), No. 1, p. 1).

II. TREATIES

The record of Soviet practice in treaties of the inter-war years relating to the peaceful settlement of disputes indicates extensive provisions for Mixed Commissions, but arbitration procedures under which a third party is appointed as a "super arbiter", as umpire, in accordance with provisions similar to those set forth in the Hague Conventions, have not been found.

The situation to which Professor Kozhevnikov refers as an instance of Soviet willingness to accept arbitration is not sufficiently fully reported to permit a determination of the structure of the tribunal intended. An examination of his cited materials reveals the following:

The article of the "Draft Convention on Non-Aggression and on Arbitration /*treteiskoe razbiratel'stvo*/, accepted by the Executive Committee of the Moscow Conference for Reduction of Armaments on 8 December 1922," reads as follows (in translation from the Russian):

Article 5. The High Contracting Parties are agreed that if a dispute arises among them over questions which have already been decided by the peace treaties, and over territorial questions; the dispute which has arisen will be transferred to arbitral review /*treteiskoe razbiratel'stvo*/ in the event that it proves impossible to settle the dispute through diplomatic channels.

(See Klyuchnikov, Y. V. and Sabanin, A. V., *Mezhdunarodnaya Politika Noveishego Vremeni v Dogovorakh, Notakh i Deklaratsiyakh*. Moscow, 1928, Vol. 3, Part I, Item No. 112, p. 211).

The Draft Convention was not signed by the parties to the Conference. If the parties had a procedure in mind for the tribunal, the procedure is not available to this study as it has not been reported in the official record of documents relating to Soviet foreign policy. Whether the tribunal was to include a third arbitrator is not indicated.

Provisions which are typical of Soviet bi-lateral treaties on the subject of amicable settlement of disputes are those in the "Convention concerning a Conciliation Procedure between the Union of Soviet Socialist Republics and Latvia," signed in Riga 18 June 1932. (See *Sbornik Deistvuyushchikh Dogovorov, Soglashenii i Konventsii Zaklyuchennykh s Inostrannymi Gosudarstvami*, Collection of Treaties, Agreements and Conventions in Force, Concluded with Foreign States, People's Commissariat of Foreign Affairs, U.S.S.R. - cited hereafter as *Collection of Treaties etc.*, U.S.S.R. - Vol. VII, 1933, p. 8. Also in CXLVIII: 129 INTS).

The pertinent articles are set forth in translation from the Russian as follows:

Article 1. The High Contracting Parties mutually bind themselves to present to a Conciliatory Commission /Soglasitel'naya Komissiya/ for amicable settlement in accordance with the provisions of this Treaty all disputes of any kind which arise between them out of circumstances occurring after the entry into force of the Treaty signed in Riga on February 5, 1932, between the Union of Soviet Socialist Republics and Latvia, which cannot be settled through diplomatic channels within a reasonable period of time. This obligation applies in particular also to disputes concerning the interpretation and execution of Treaties and Agreements already concluded or to be concluded between the High Contracting Parties.

Article 2. The Conciliatory Commission provided for in Article 1 shall not be permanent, but shall be formed specially for each session. It shall meet annually in regular session, on a date set each time in agreement with both High Contracting Parties.

Special sessions shall be held, if in the opinion of one of the two parties some urgent specific situation requires them.

All sessions of the Conciliatory Commission shall be held alternatively in Moscow and Riga. The place of the first session shall be chosen by lot.

As a general rule sessions shall not last for more than fourteen days.

Article 3. The Conciliatory Commission shall be composed of four members, two of which shall be named by each of the High Contracting Parties from among its own citizens for each session of the Commission.

Each of the High Contracting Parties has the right to call to its aid experts named by it, who may sit in the Commission with the right of a consultative vote.

The Chairmanship of each session shall be in one of the members of the Commission from the side in whose territory it is sitting.

Article 4. The Conciliatory Commission has the duty of clarifying disputed questions put before it and of proposing to both High Contracting Parties a solution of the question which is fair and satisfactory to both parties and, in particular, which shall avert the future possible disagreement between both parties on the question concerned.

If the Conciliatory Commission does not reach a general proposal during one session on any of the questions on the agenda, the question may again be presented to a special session of the Conciliatory Commission, which must, however, take place not later than four months after the first session.

The results of each session of the Conciliatory Commission shall be set forth in a report to the governments of both parties.

Publication of the report in whole or in part may occur only with the consent of both governments.

/Article 5.

Article 5. Not later than fifteen days before the date set for a regular session of the Conciliatory Commission each of the parties shall notify the other through diplomatic channels of the list of questions which it wishes reviewed at the session to be held.

In the event of notice of the calling of a special session, the party giving the notice must declare to the other party the circumstances of the urgent specific situation, which are the basis for the call. The Commission must assemble not later than one month after the notice has been received.

Article 6. Each High Contracting Party obligates itself to provide the Commission with all facts useful to the case and to assist it in every way in carrying out its tasks.

Article 7. Both High Contracting Parties obligate themselves to refrain from any measure which could influence in an undesirable manner the discussion of any question in the Conciliatory Commission. In particular, they declare their readiness to take into consideration for this purpose the question of preventive measures.

Article 8. A quorum of the Conciliatory Commission shall be present only when all members called in the required manner are present.

If one of the members is not in a condition to participate in the work of the Commission, the interested party shall name a substitute for him not less than thirty days after the impediment has been established.

The decision of the Commission shall be adopted on the general agreement of all of its members.

Article 9. The Conciliatory Commission shall present to both governments a report on all disputes referred to it for review. The report shall be presented before the end of the session during which the disputed questions have been reviewed, unless the contracting parties have agreed to extend the period.

The report shall contain a draft for the settlement of each disputed question presented to the Commission, if this draft has been accepted by all members of the Commission.

In the event that the Commission has been unable to reach agreement on one general report, the report shall contain the proposals of both sides of the Commission.

Article 10. Further details of the procedure shall be defined to the extent necessary by the Conciliatory Commission itself.

Article 11. Each of the High Contracting Parties obligates itself to inform the other party within a reasonable time, but not to exceed three months, whether it will accept the proposal of the Commission contained in the report.

Article 12. Compensation of members of the Conciliatory Commission, as well as of experts and other persons retained by each of the High Contracting Parties shall be paid out of funds of the party responsible.

All other expenditures, connected with the activity of the Commission

/shall be

shall be divided equally between both parties.

Article 13. This Convention is an integral part of the Treaty concluded in Riga on 5 February 1932 between the Union of Soviet Socialist Republics and Latvia, and is subject to ratification.

It shall come into effect on the exchange of ratifications of the aforementioned treaty.

This convention shall remain in force for the same term for which the Treaty of 5 February 1932 has been concluded.

Article 14. This Convention is concluded in the Russian and Latvian languages. Both texts have equal force.

(Concluding paragraphs and signatures).

Other conventions concerning conciliation have been concluded by the U.S.S.R. with the following countries:

Germany - "Convention Concerning a Conciliation Procedure between the U.S.S.R. and Germany," signed in Moscow, 25 January 1929 - (Collection of Treaties, etc., U.S.S.R., Vol. V, 1930, p. 10, and XC:219 LWS).

This Convention is in language identical with that of the Latvian Convention, set forth above, except that it has no Articles similar to Articles 6, 7, 8 and 9 of the Latvian Convention. It was extended indefinitely by a Protocol signed in Moscow on 24 June 1931, each party retaining the right to denounce it on one year's notice, but not before 30 June 1933. (Collection of Treaties, etc., U.S.S.R., Vol. VIII, 1935, p. 7 and CIVII:383 LWS).

United Kingdom - "Protocol Relative to the Procedure for the Settlement of Questions outstanding between His Majesty's Government in the United Kingdom and the Government of the Union of Soviet Socialist Republics, such Procedure to become Operative immediately on the Resumption of full Diplomatic Relations between the two States, including the Exchange of Ambassadors", signed in London, 3 October 1929 - (Collection of Treaties, etc., U.S.S.R., Vol. VI, 1931, p. 5; British Parliamentary Papers, Russia No. 1, 1929, Cmd. 3418, Correspondence regarding the Resumption of Relations with the Government of the Union of Soviet Socialist Republics, p. 7).

This Protocol departed sharply from the pattern of the Convention with Germany of 25 January 1929 in that it listed five specific subjects which would be regulated by it, and the procedure established for settlement of disputes was less detailed. The pertinent articles read as follows, in the English text:

Article 4. The plenipotentiaries of the two Governments shall, if necessary, be assisted by joint committees, the members of which shall be appointed in equal number by each Government from among their nationals, whether officials or not, specially acquainted with the matters under discussion.

Article 5. These experts shall report to each of the plenipotentiaries on the results reached in their joint examination of the respective questions and on the solution thereof which they suggest.

Article 6. All agreements resulting from the negotiations between the plenipotentiaries shall take the form of a treaty or treaties between the two Governments.

Finland: "Convention Concerning a Conciliation Procedure between the Union of Soviet Socialist Republics and Finland," signed in Helsinki, 22 April 1932. (Collection of Treaties, etc., U.S.S.R., Vol. VII, 1933, p. 24 and CLVII:401 LNTS).

This Convention contains many articles which are worded identically with those of the subsequent Convention with Latvia of 18 June 1932, but some of the introductory Articles vary in language from the Latvian Convention, although they provide for an essentially similar procedure.

Estonia: "Conciliatory Convention Between the Union of Soviet Socialist Republics and Estonia," signed in Moscow, 16 June 1932. (Collection of Treaties, etc., U.S.S.R., Vol. VII, 1933, p. 34 and CXXXI:309 LNTS).

This Convention is in language nearly identical to that of the Latvian Convention, except that it omits the details set forth in Articles 8, 9, 11 and 12 of the Latvian Convention, stating in Article 6 (in translation): "The Conciliatory Commission shall define its procedure itself."

Poland: "Convention Concerning a Conciliation Procedure Between the Union of Soviet Socialist Republics and the Polish Republic," signed in Moscow, 23 November 1932. (Collection of Treaties, etc., U.S.S.R., Vol. VII, 1933, p. 15 and CXXXVI:55 LNTS).

The pattern of the Convention is similar to that of the Latvian Convention, although the language is not identical. Its article on procedure substitutes the following for the words of Article 10 of the Latvian Convention (in translation):

Article 6. To the extent that the contracting parties do not by joint agreement decide otherwise, the Conciliation Commission shall define itself its procedure, preserving, however, in doing so the regulations set forth in this Convention.

/France:

France: "Convention Concerning a Conciliation Procedure between the Union of Soviet Socialist Republics and the French Republic," signed in Paris, 29 November 1932. (Collection of Treaties, etc., U.S.S.R., Vol. VII, 1933, p. 29 and CLVII:421 LNTS).

The pattern of the Convention is the same as that of the Latvian Convention, except that a procedure is not detailed (it being left by Article 5 to the Commission itself to define its own procedure) and the basis for decision is worded, as follows, instead of as in Article 4 of the Latvian Convention (in translation):

Article 6. The Commission is required to study the disputed questions brought to it by both governments and to recommend to them an interpretation which it recognizes as based upon law, or an agreement which it finds just.

Italy: "Treaty of Friendship, Non-Aggression and Neutrality Between the Union of Soviet Socialist Republics and Italy," signed in Rome on 2 September 1933. (Collection of Treaties, etc., U.S.S.R., Vol. VIII, 1935, p. 8 and CXVIII:319 LNTS).

This Treaty has one article pertaining to conciliation, this reading as follows (in translation):

Article 6. The High Contracting Parties bind themselves to submit to a conciliatory procedure /soglasitel'naya protsedura/ questions on which a difference of opinion has arisen between them, and which cannot be decided by the customary diplomatic channels.

Treaties establishing conciliation procedure for the settlement of border disputes and incidents are also found in the practice of the U.S.S.R. Typical of these procedures is that established in the "Convention Between the Union of Soviet Socialist Republics and the Polish Republic on the Method of Investigating and Settling Frontier Incidents and Disputes," signed in Moscow on 3 June 1933. (Collection of Treaties, etc., U.S.S.R., Vol. VIII, 1935, p. 79 and CXIII:265 LNTS). This Convention is an expanded form of the "Agreement Between the U.S.S.R. and the Polish Republic on the Settlement of Border Disputes," signed in Moscow on 3 August 1925. (Collection of Treaties, etc., U.S.S.R., Vol. III, 1932, p. 55). Pertinent provisions of the 1933 Convention indicating the Soviet conciliation procedure for this particular type of problem read as follows (in translation):

Article 1. The Government of the Union of Soviet Socialist Republics and the Government of the Polish Republic shall each name Representatives for Border Affairs, on whom shall lie the responsibility for investigating

/and deciding

and deciding border incidents and conflicts, and also disputes between border authorities of the Contracting Parties, in accordance with Article 4 of this Convention.

The surnames and given names of the Representatives for Border Affairs shall be mutually communicated through diplomatic channels as each new Representative for Border Affairs is appointed.

The number of Representatives for Border Affairs and also the districts over which they have jurisdiction and the places of permanent residence of these persons shall be established by a Protocol affixed to this Convention. This Protocol may be changed on mutual agreement through diplomatic channels during the period in which this Convention remains in force.

Article 4. The Representatives for Border Affairs are required to:

See that the border authorities of the Contracting Parties conform to the boundary treaties, conventions and agreements between the Union of Soviet Socialist Republics and the Polish Republic in as much as border disputes, incidents or conflicts may arise in connection with these treaties, conventions and agreements;

Take measures to prevent incidents or conflicts which can arise on the state borders;

Investigate and settle incidents and conflicts which have arisen on the state border in particular instances of /11 classes of cases are listed/.

Article 5. The Orders which have been adopted by both Representatives for Border Affairs or by their Agents based upon an exhaustive study of the dispute, incident or conflict, shall be final. Exceptions are Orders adopted in accordance with sub-section 11 of Article 4 of this Convention, if the sum paid exceeds the maximum established for all such accountings by the Contracting Party required to pay, as communicated through diplomatic channels to the other Contracting Party. In such cases the decisions which have been adopted enter into force only after their approval by the People's Commissariat of Foreign Affairs of the Union of Soviet Socialist Republics and the Ministry of Foreign Affairs of the Polish Republic.

Questions on which agreement has not been reached by the Agents of the Representatives for Border Affairs shall be transmitted to these Representatives for discussion.

Questions on which agreement has not been reached by the Representatives for Border Affairs shall be transmitted for settlement through diplomatic channels.

Article 6. Each Representative for Border Affairs has the right on his own initiative to transfer any case for settlement through diplomatic channels, informing the Representative for Border Affairs of the other Contracting Party of that fact. Nevertheless, in such cases the Representatives for Border Affairs must carry out the pertinent investigation of the case and set forth the result in a Protocol.

Article 7. A short Protocol shall be prepared concerning each meeting of the Representatives for Border Affairs or of their Agents, in which the course of the meeting and the decision adopted must be set forth in brief. The Protocol must be prepared in two identical copies in the official languages of the Contracting Parties. The decisions shall be considered as adopted beyond the possibility of subsequent change after signature of the Protocol by the aforementioned persons.

Article 8. The Representatives for Border Affairs shall establish, on the basis of mutual agreement, control - transfer points on the state border through which exchange of all correspondence shall take place with relation to the activity of the Representatives for Border Affairs and also through which the transfer of persons, livestock and property shall take place.

Article 9. Meetings and sessions of the Representatives for Border Affairs or of their Agents shall take place on the proposal of one of them and, if possible, at the time set in the invitation. A reply to the invitation must be given immediately, and in any event not later than 48 hours from the time at which the invitation was received.

The Representatives for Border Affairs of one Contracting Party must personally attend the meeting or session to which he shall be invited by the other Representative for Border Affairs, except for cases when he cannot attend because of serious reasons (illness, leave of absence, vacation). In this event the Representative for Border Affairs shall be replaced by his Deputy, who must advise the Representative for Border Affairs of the other Contracting Party of this fact in good time. On agreement between the Representatives for Border Affairs meetings and sessions of their Deputies may take place.

In meetings or at sessions of the Representatives for Border Affairs, their Deputies or their Agents, in addition to the named persons, there may also participate a representative of the local agency of border protection, with a consultative vote, and the necessary technical personnel (secretaries and interpreters) and also, in the event of necessity, experts of each Party.

Article 10. Meetings and sessions, to which reference is made in the preceding article, must as a rule occur alternately on opposite sides of the state border. Nevertheless, the Representatives for Border Affairs of the Contracting Parties may mutually agree to depart from this principle if considerations of convenience suggest otherwise.

An agenda for the session must be established through preliminary conversations or by an exchange of letters. In extraordinary situations, upon the agreement of both Representatives for Border Affairs or of their Agents, questions not included in the agenda may be accepted for review.

Subsequent articles established a regime governing the issuing of visas to participants in the sessions, and guaranteeing inviolability of the person and of business papers, together with the right to bring necessary food and tobacco to the meetings. Expenses of each Contracting Party are to be borne fully by the Party.

/A similar

A similar pattern for resolving border disputes and incidents was established by the following Agreements:

Latvia - U.S.S.R., 19 July 1926 - (Collection of Treaties, etc., U.S.S.R., Vol. IV, 1936, p. 30; LIV:155 INTS).

Estonia - U.S.S.R., 8 August 1927 - (Collection of Treaties, etc., U.S.S.R., Vol. IV, 1936, p. 35; LXX:401 INTS).

Turkey - U.S.S.R., 6 August 1928 - (Collection of Treaties, etc., U.S.S.R., Vol. VI, 1931, p. 29).

Finland - U.S.S.R., 24 September 1928 - (Collection of Treaties, etc., U.S.S.R., Vol. V, 1930, p. 38; LXXXII:63 INTS).

A Central Conciliation Commission and local Conciliation Commissions composed of representatives of the U.S.S.R. and Rumania was provided for by a Statute signed on 20 November 1923 (Collection of Treaties, etc., U.S.S.R., Vol. I - II, 1935, p. 252). The procedure established for this Conciliation Commission, which was to have jurisdiction over border incidents on the Dnester River, followed the pattern of the Latvian Convention of 18 June 1932.

A mixed commission to map the boundary between the U.S.S.R. and Afghanistan was established by an "Agreement between the Union of Soviet Socialist Republics and Afghanistan on Border Questions," signed in Moscow on 13 June 1946. (Vedomosti Verkhovnoy Soveta, S.S.S.R., No. 6 (460), 12 February 1947, p. 4). The Commission is to be composed of three representatives of each party, and is empowered to decide the ownership of islands. The report of the Commission with the description of the boundary and the map is subject to approval by the governments of the Contracting Parties. No procedure for the Commission was defined in the Agreement.

A similar Mixed Border Commission was provided for by Article 3 of the "Treaty Between the Union of Soviet Socialist Republics and the Finnish Republic Concerning the Transfer to the Territory of the Soviet Union of a Part of the Territory of Finland in the district of Yaniskoski Electric Station and the Regulatory Dam of Niskakoski," signed in Helsinki on 3 February 1947 (Vedomosti Verkhovnoy Soveta S.S.S.R., No. 19 (473) 11 June 1947, p. 4). The Mixed Soviet-Finnish Commission provided for by article 3 of the Treaty was directed by a note attached to the Treaty, "to set up border markers and to draw up a detailed description of the line serving as the border of the aforementioned territory and to inscribe this line on a map of the scale of 1:25,000." The line so defined by the Commission was "subject to the approval of both governments."

III. COMMERCIAL AGREEMENTS

Soviet practice has been to provide for and utilize arbitration in settlement of disputes arising out of commerce. An example of such a provision is to be found in the "Treaty Concerning Trade and Navigation Between the Union of Soviet Socialist Republics and Denmark," signed in Moscow, on 17 August 1946 (Vedomosti Verkhovnogo Soveta S.S.S.R., No. 11 (465), 29 March 1947; 8:201 UNIS). The pertinent articles read (in translation):

Article 14. The settlement of disputes which have arisen over contracts relating to trade between the two countries may be reached through arbitration /arbitrazh/.

Each of the Contracting Parties shall be prepared, at the request of the other, to enter into negotiations for the purpose of concluding an agreement concerning a uniform and the best possible procedure for arbitration, based upon the principle of parity, and also concerning a procedure for execution of arbitration awards. The statute setting up such an agreed upon procedure shall be retroactive.

Article 15. All disputes relating to commercial agreements concluded between Soviet commercial organizations and Danish individuals or corporations are subject, in the absence of an arbitration /treteiskoe razbiratel'stvo/ clause, to the jurisdiction of the Danish courts if the agreement was concluded in Denmark and to the jurisdiction of Soviet courts if the agreement was concluded in the Union of Soviet Socialist Republics. Nevertheless, the courts of another country shall have the right to try disputes in every instance in which their jurisdiction over such disputes is established by a special condition of the contract.

An article worded identically to Article 14 of the Danish Treaty (above) is to be found as Article 16 in the "Treaty Concerning Trade and Navigation Between the Union of Soviet Socialist Republics and the Hungarian Republic," signed in Moscow on 15 July 1947 (Vedomosti Verkhovnogo Soveta S.S.S.R., No. 10 (509), 10 March 1948, p. 4).

The article relating to arbitration clauses in commercial agreements is more detailed than in the Danish Treaty. It reads as follows (in translation):

Article 17. The Contracting Parties obligate themselves to execute arbitral awards /arbitrazhnye resheniya/ in disputes arising out of commercial agreements concluded by their citizens, organizations or enterprises, if the settlement of the dispute by an arbitration tribunal /arbitrazh/, whether ad hoc or permanent, was provided for in the agreement itself or in a separate agreement establishing a form of tribunal suitable for such a business arrangement.

Execution of an arbitral award, issued in accordance with the procedure set forth above in this article, may be refused only in the following cases:

/(a) if the arbitral

(a) if the arbitral award, on the basis of the laws of the country where it was made, does not have the force of a final decision;

(b) if the arbitral award requires a party to do an act forbidden by the laws of the country in which execution of the award is sought;

(c) if the arbitral award is contrary to the public policy /publichnyi poryadok/ of the country in which execution is sought.

The decree on execution, as well as the execution of the arbitral awards, shall proceed in accordance with the legislation of the Contracting Party executing the award.

The wording of Article 17 concerning execution of arbitral awards of the Hungarian Treaty is found in identical form in Article 14 of the "Treaty Concerning Trade and Navigation Between the Union of Soviet Socialist Republics and the Czechoslovak Republic," signed in Moscow on 11 December 1947 (Vedomosti Verkhovnogo Soveta S.S.S.R., No. 9 (556), 22 February 1949, p. 4). There is, however, no article corresponding to Article 14 of the Danish Treaty and Article 16 of the Hungarian Treaty (providing for the settlement of disputes arising over commercial matters between the countries concerned by arbitration).

The "Treaty Concerning Trade and Navigation Between the Union of Soviet Socialist Republics and the People's Republic of Bulgaria," signed in Moscow on 1 April 1948 (Vedomosti Verkhovnogo Soveta S.S.S.R., No. 10 (557), 26 February 1949, p. 4) is similar, in respect to arbitration, to the Czechoslovak Treaty, i.e., it has an article relating to the execution of arbitral awards between commercial parties but no article establishing arbitration in settlement of commercial disputes between the states concerned.

The "Trade Treaty Between the Union of Soviet Socialist Republics and the Swiss Federation," signed in Moscow on 17 March 1948 (Vedomosti Verkhovnogo Soveta S.S.S.R., No. 13 (560), 27 March 1949, p. 4), follows the form of the Treaty with Bulgaria. There is no provision for arbitration between the two states which are parties to the agreement, but only the provision of the Treaty with Bulgaria relating to the execution of arbitral awards made in connection with disputes involving commercial parties which are corporations or individual citizens of the two states.

IV. COMMERCIAL ARBITRATION

Commercial arbitration has long been a part of the commercial practice of Soviet state trading corporations. Since the subject is one relating to disputes arising out of transactions between individuals or corporations, rather than states, it does not seem pertinent to the subject of this memorandum. It may be adequate to indicate only that two Arbitration Commissions exist in the U.S.S.R. to handle foreign matters. A Statute for a Maritime Arbitration Commission of the All-Union Chamber of Commerce was approved by the Central Executive Committee of the U.S.S.R. on 13 December 1930. (Collection of Laws, U.S.S.R., 1930, Part I, No. 60, Article 637).

The Commission is composed of 25 members (increased from 15 by an Amendment to the Statute under date of 8 January 1933, Collection of Laws, U.S.S.R., 1933, Part I, No. 2, Article 12) from which each party to a dispute names an arbitrator. A third member is not selected unless the two arbitrators cannot reach agreement on the award. Such a third member is named by the two arbitrators, and if they cannot agree, the Chairman of the Commission names him. If the parties so decide, a single arbitrator may be named by the Chairman of the Commission to make the award. Appeal from the award lies to the Supreme Court of the U.S.S.R., which may set it aside and remand it to the Commission if the law has not been properly applied or has been violated by the arbitrators. Rules of procedure were issued by the All-Union Chamber of Commerce of the U.S.S.R. on 8 February 1931.

Non-maritime disputes arising in foreign commercial intercourse may be referred through the medium of an arbitration clause in a contract to the Foreign Trade Arbitration Commission of the All-Union Chamber of Commerce of the U.S.S.R. This Arbitration Commission was created by decree of 17 June 1932. (Collection of Laws, U.S.S.R., 1932, Part I, No. 48, Article 281). The Commission is a panel of 15 persons named for one year terms from representatives of Soviet trading, industrial and transport organizations and others (largely Professors of Law) having special knowledge of foreign trade. Appointment of arbitrators by the parties and of an umpire in the event of inability to reach an agreement on the part of the two arbitrators follows the practice of the Maritime Arbitration Commission. There is no appeal, however, from the awards of the Commission. Rules of procedure detail the steps to be taken by the
/parties

parties in submitting disputes. (Published in English with a translation of the Statute in a brochure entitled "U.S.S.R. Chamber of Commerce, Foreign Trade Arbitration Commission," Moscow, no date).

The practice of both tribunals is indicated only partially. Decisions for the first five years of the Maritime Arbitration Commission are published in two volumes entitled "Sbornik Reshenii Morskoi Arbitrazhnoi Komissii pri Vsesoyuznoi Torgovoi Palate" (Moscow, 1936), indicating that 65 cases were decided in the first five years, thirty-six being between Soviet organizations and foreigners.

The All-Union Chamber of Commerce of the U.S.S.R. issued an official report in 1941 on about five years work of the Foreign Trade Arbitration Commission in which 29 cases decided during that period are reported or abstracted. (Vneshnetorgovyi Arbitrazh, Moscow, 1941). The cases concerned disputes between Soviet state trading corporations and Belgian, Canadian, Dutch, Egyptian, English, French, German, Greek, Norwegian and Swedish parties.

Perhaps the most publicized arbitration of a commercial character was that between Lena Goldfields Company, Limited, and the U.S.S.R. The provision relating to the Arbitration Court in the concession agreement of 30 April 1925 was the following.

Paragraph 90

All disputes and misunderstandings concerning the interpretation or execution of the present agreement and all appendices to it shall, on the representation of either party, be examined by the Arbitration Court.

The Arbitration Court shall be composed of three (3) members, one of whom shall be selected by the Government, one by the Lena Goldfields Company and the third, who is to be the super-arbitrator, shall be chosen by the two parties together by mutual agreement.

If such agreement is not reached within 30 (thirty) days from the day of receipt by the defending party of a written summons to the Arbitration Court, giving an exposition of the matters in dispute, and the designation of the member of the Court selected by the prosecuting party, then, within 2 (two) weeks, the Government shall nominate 6 (six) candidates from among the professors of the Freiberg Mining Academy or of the Royal Technical High School of Stockholm and shall request the Lena Goldfields Company to appoint one of them as super-arbitrator within a period of 2 (two) weeks.

If the Lena Goldfields Company fails to appoint the super-arbitrator within the said 2 (two) weeks, there being no insuperable obstacles to prevent such appointment, the Government shall be entitled to request the Council of one of the said higher academic institutions to appoint a super-arbitrator from among the aforesaid 6 (six) candidates nominated by the Government.

/If the Government

If the Government, in the absence of insuperable obstacles, fails to nominate the 6 (six) candidates for the super-arbitratorship within the said period of 2 (two) weeks, the Lena Goldfields Company shall be entitled to request the Council of one of the aforesaid higher academic institutions to nominate 6 (six) candidates and to appoint a super-arbitrator from among their number, as stated above.

If upon receipt of a notice from the super-arbitrator giving the day and place of the first session of the Court one of the parties, in the absence of insuperable obstacles, fails to send his arbitrator to the Arbitration Court or he refuses to participate in the session, then the matter in dispute shall, at the request of the other party, be settled by the super-arbitrator and the other member of the Court, such settlement to be valid only if unanimous.

The Arbitration Court shall appoint a permanent secretary, who shall keep records of all proceedings of the Court's sessions. The remuneration of the president and the secretary of the Court, as well as the latter's expenses, shall be paid by both parties in equal proportions. Each of the parties shall pay his own arbitrator and his expenses, as well as the costs connected with the bringing of a suit before the Court.

Matters to be settled by the Arbitration Court must be presented in written form to the president of the Court, and the party bringing an action must provide the other party with a copy of its declaration to the Court. The super-arbitrator shall appoint the place and date for the holding of the first session of the Court.

When appointing the date and place for a session of the Court to be held by the super-arbitrator and (sic) the Arbitration Court shall give consideration to:

- (1) the reasonable length of time required for either party to make preparation for departure and arrival at the appointed place at the proper time, and
- (2) the accessibility of the place being such that either party can reach it by the date fixed.

However, if either of the parties encounters insuperable obstacles to the sending of their members to the Court or of the Court president in time to reach the appointed place at the proper time, early measures must be taken to inform the super-arbitrator of the Arbitration Court of this circumstance.

In any case, the super-arbitrator or the Arbitration Court in the event of the absence of one party's representatives to the Court, shall, on declaring a session open, make a full statement relating to the matter in dispute, and the reasons for which the session has been called.

The Arbitration Court shall have full power thenceforth to fix the place and time of its sessions, as well as to settle methods and order of procedure. It shall be obligatory on each of the parties to supply the Court, at the time it requires, with all possible information and evidence relating to the case which are at their disposition, regard being had to such as may be of State importance.

/All decisions

All decisions of the Court must in each case be made in written form and a copy of each decision must immediately be sent to the two parties. Every majority decision of the Court shall be final and binding for both parties and shall immediately be put into execution.

If the Arbitration Court comes to a decision requiring one of the parties to do something or to refrain from doing something, it shall, at the same time, decide and warn the said party of the consequences accruing for failure to carry out its decision, namely, it shall impose the payment of a certain sum to the other party, or it shall authorize the other party to carry out the neglected work at the expense of the defaulting party, or it shall declare the agreement annulled, the latter only at the request of the plaintiff.

(Central Concessions Committee of the U.S.S.R., Documents Concerning the Competence of the Arbitration Court Set up in Connection with the Questions Outstanding Between the Lena Goldfields Company Limited and the U.S.S.R., Moscow, 1930, pp. 44-46).

V. THE PEACE TREATIES

Articles of the Peace Treaties with Italy, Finland, Bulgaria, Hungary, and Rumania provide procedures for the settlement of disputes, which are pertinent to this study.

The provisions of the Treaty with Italy, signed on 10 February 1947, read as follows in the English language text, with insertion of the words used in the Russian language text for "Conciliation Commission".

Part IX Settlement of Disputes Article 83.

1. Any dispute which may arise in giving effect to Articles 75 and 78 and Annexes XIV, XV, XVI and XVII, part B, of the present Treaty shall be referred to a Conciliation Commission /Soglasitel'naya Kommissiya/ consisting of one representative of the Government of the United Nation concerned and one representative of the Government of Italy, having equal status. If within three months after the dispute has been referred to the Conciliation Commission no agreement has been reached, either Government may ask for the addition to the Commission of a third member selected by mutual agreement of the two Governments from nationals of a third country. Should the two Governments fail to agree within two months on the selection of a third member of the Commission, the Governments shall apply to the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, who will appoint the third member of the Commission. If the Ambassadors are unable to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. When any Conciliation Commission is established under paragraph 1 above, it shall have jurisdiction over all disputes which may thereafter arise between the United Nation concerned and Italy in the application or interpretation of Articles 75 and 78 and Annexes XIV, XV, XVI and XVII, part B, of the present Treaty, and shall perform the functions attributed to it by those provisions.

3. Each Conciliation Commission shall determine its own procedure, adopting rules conforming to justice and equity.

4. Each Government shall pay the salary of the member of the Conciliation Commission whom it appoints and of any agent whom it may designate to represent it before the Commission. The salary of the third member shall be fixed by special agreement between the Governments concerned and this salary, together with the common expenses of each Commission, shall be paid in equal shares by the two Governments.

5. The parties undertake that their authorities shall furnish directly to the Conciliation Commission all assistance which may be within their power.

/6. The decision

6. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

(U. S. Department of State Publication 2960, pp. 166-167).

Settlement of disputes arising under other Articles of the Treaty than those set forth in Article 83 is provided for by Article 87 in the following words:

1. Except where another procedure is specifically provided under any Article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the Four Ambassadors acting under Article 86 except that in this case the Ambassadors will not be restricted by the time limit provided in that Article. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

(Op. cit., p. 168).

Provisions in the treaties with the other defeated states are essentially similar, although not identical, there being no requirement in the Bulgarian, Finnish, Hungarian and Rumanian Treaties that a third member of the Commission for specialized problems be a national of a third country, although such a provision exists in the article relating to the Commission which shall interpret the general articles of the Treaty in the absence of agreement between the representatives of the parties to the dispute.

VI. THE DICTIONARIES

Three words or phrases appear in Soviet texts and treaties concerned with the subject of arbitration. They have been indicated in brackets in translations above from texts and treaties. They are "Arbitrazh", "Treteiskoe Razbiratel'stvo" and "Soglasitel'naya Kommissiya". Soviet dictionaries of the Russian language give the following definitions.

Dictionary of the Russian Language, compiled by S. I. Ozhegov, Chief Editor, Academician S. P. Obnorskii, published by the Institute of the Russian Language of the Academy of Sciences of the U.S.S.R., Moscow, 1949. /Slovar' Russkogo Yazyka/.

Arbitrazh - The decision of disputed questions by arbitrators, by an arbitral tribunal /Treteiskii Sud/.

Treteiskii - Relating to the trial of a dispute, of a conflict, by a third, disinterested party.

Soglasitel'nyi - Serving to remove disagreement. A Conciliation Commission /Soglasitel'naya Kommissiya/.

Explanatory Dictionary of the Russian Language, compiled by G. O. Vinokur, Prof. B. A. Larin, S. I. Ozhegov, B. V. Tomashevskii, Prof. D. N. Ushakov, under the editorship of Prof. D. N. Ushakov, published by the State Dictionary - Encyclopedia Press, Moscow. 4 vols., 1934-1940. /Tolkovyi Slovar' Russkogo Yazyka/.

Arbitrazh - (French arbitrage). 1. The decision of disputed questions by arbitrators (law). Transfer a question to arbitration. 2. A commercial operation based upon the use of differences in prices and rates of exchange (trade). 3. International Arbitration Tribunal /Treteiskii Sud/ (law).

Treteiskii - In meaning related to the trial of any conflict, of a dispute by a third disinterested party. Arbitral judge. /T. Sud'ya/. Arbitral Court /T. Sud/. Arbitral decision of a dispute /Treteiskoe Reshenie Konflikta/.

Soglasitel'nyi - (Bookish, official language). Serving to compromise, conciliate something, eliminate difference of opinion, contradiction. A Conciliation Commission /Soglasitel'naya Kommissiya/.

VII. RECAPITULATION

Soviet text writers accept arbitration as a means of settling disputes between states.

Soviet dictionary definitions indicate a use of the word in connection with decisions of disputed questions by a third disinterested party. Practice indicates, however, a marked preference for mixed commissions, and even suggests a changing meaning for the words "arbitrazh" and "treteiskoe razbiratel'stvo". For example, when the word "arbitrazh" is used in the recent treaties with Denmark and Hungary, there are added the words "in accordance with the principle of parity." This modifier suggests that the parties have in mind an arbitral procedure which makes no provision for a third disinterested party to the arbitration to serve as a super-arbitrator or umpire.

Older treaties use the words "arbitrazh" and "treteiskoe razbiratel'stvo" to refer to procedures which make no provision for the naming of a third disinterested party. Such a procedure is provided for only in the Peace Treaties and in connection with disputes which arise out of commercial contracts concluded by individuals and corporations of foreign states with Soviet state trading corporations. Even in these instances the third party is chosen only if the two arbitrators named by the parties are unable to reach agreement.
