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MEMORANDUM ON THE SOVIET DOCTRINE
AND PRACTICE WITH RESPECT
TO THE LAW OF TREATIES

(Prepared by the Secretariat)

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/SOVIET

SOVIET DOCTRINE AND PRACTICE WITH RESPECT TO THE LAW OF TREATIES

I. USE OF THE TERM "TREATY"

Two definitions of the term "treaty" have appeared in available post-war Soviet text-books. Both are the work of the same author, although the latter work can be taken to represent more than his views alone, for it forms a part of a collective study published by the Institute of Law of the Academy of Sciences of the U.S.S.R. under the general editorship of Prof. V. N. Durdenevskii and Judge S. B. Krylov. This study is issued as a text-book for Law Institutes and Faculties by the Ministry of Higher Education of the U.S.S.R.

Taking the definition of the term "treaty" in the order of their appearance, they read in translation:

An international treaty is an agreement between two or more states concerning their rights and duties in some general or specific field of their public-law relationships.

(F. I. Kozhevnikov, Uchebnoe Posobie po Mezhdunarodnomu Publichnomu Pravu /Ocherki/, Moscow, 1947, p. 94. Study Aid for International Public Law, Essays).

An international treaty is an explicitly phrased agreement between two or more states concerning their rights and duties, which have their origin in state dominion.

(Institut Prava Akademii Nauk S.S.S.R., Mezhdunarodnoe Pravo, Moscow, 1947, p. 369. International Law).

/II. CAPACITY TO

II. CAPACITY TO MAKE TREATIES

Both recent Soviet texts are identical in defining capacity to enter into treaties, as follows, in translation:

The right to conclude an international treaty belongs, as a rule, only to sovereign states.

Kozhevnikov, op. cit., p. 94.

Institut Prava, op. cit., p. 370.

It is pointed out, however, that in practice there are parties to international agreements which are not sovereign states, as is the case with dependent and colonial countries, which are parties to the Universal Postal Convention.

III. NAME GIVEN TO A TREATY

Soviet practice recognizes no difference in the effect given to an international agreement because of the title it bears as a Treaty, Convention, Protocol, or Agreement. For example, Vol. IX of the "Collection of Treaties, Agreements and Conventions in Force Concluded with Foreign States", published by the People's Commissariat for Foreign Affairs of the U.S.S.R. in 1938, contains the texts of documents, entitled variably "Treaty", "Convention", "Protocol", "Agreement", "Exchange of Notes", and "Declaration".

One of the text-books cited above (Institut Prava, op. cit., p. 397) says, in translation:

The various names, treaty, pact, convention, agreement, protocol, declaration, exchange of notes, etc., have no legal importance, strictly speaking.

IV. FORM OF A TREATY

Soviet text-writers find no necessity for the adherence to any particular form for a treaty. They point even to two examples of oral treaties, that of Alliance between Peter I and Augustus II in 1698 and the so-called "gentleman's agreement" between the U.S.S.R. and the Mongolian People's Republic of 27 November 1934. The written form is, however, considered as typical. (Institut Prava, op. cit., p. 372).

Treaties in written form, as published in the Collection of Treaties of the U.S.S.R., are signed. No indication of the acceptance of the binding character of unsigned agreements has been found.

Soviet practice places no limit upon the number of supplementary agreements which may be attached to a Treaty. Usually, such a supplementary agreement is entitled "Protocol" or it may be the text of notes, or a schedule of supplies.

Supplementary protocols appear frequently in Soviet practice. An instance of the supplementary protocol is to be found in the "Provisional Commercial Agreement Between the Union of Soviet Socialist Republics and the French Republic,"* signed in Paris on 11 January 1934, which had attached to it three documents, each signed by the parties who concluded the principal agreement, and bearing the titles "Supplementary Protocol, No. 1", "No. 2" and "No. 3". (See Sbornik Deistvuyushchikh Dogovorov, Soglashenii i Konventsii Zaklyuchennykh s Inostrannymi Gosudarstvami, Vol. VIII, Moscow, 1935, p. 158 and pp. 171-2. Collection of Treaties, Agreements and Conventions in Force Concluded with Foreign States, cited hereafter as Collection of Treaties, etc., U.S.S.R. For text see also CLXVII:349 INTS).

An instance of supplementary notes is to be found in the eight notes attached to the "Treaty of Settlement, Trade and Navigation Between the Union of Soviet Socialist Republics and Iran," signed in Teheran on 27 August 1935, (Collection of Treaties, etc., U.S.S.R., Vol. IX, Moscow, 1938, p. 129 and pp. 147-150). Each note was signed.

Soviet practice has been to accept two or more languages for the authentic texts of a treaty, and to encourage the use of Russian as a language for the text of bilateral and multilateral treaties, in which the U.S.S.R. participates. Soviet desire that the Russian language be an official language of the United Nations is indication of a trend, which has been accentuated since early in the /Second World War.

Second World War.

The "Treaty on Trade and Navigation Between the U.S.S.R. and the People's Republic of Bulgaria," dated 1 April 1948, (Vedomosti Verkhovnogo Soveta S.S.S.R., No. 10 (557), 26 February, 1949, p. 4) provides an example of current Soviet practice. In a final paragraph to Article 20 of this Treaty, it is provided (in translation):

Concluded in Moscow on 1 April 1948 in two originals, each in the Russian and Bulgarian languages, both texts having equal force.

A pre-war treaty provides a variation. See "Convention on the Method of Reviewing and Resolving Frontier Incidents and Disputes between the Union of Soviet Socialist Republics and the Turkish Republic," concluded in Moscow on 15 July 1937, (Vedomosti Verkhovnogo Soveta S.S.S.R., No. 33 (56), 29 September 1939, p. 1) in which it is provided in Article 29, as follows (in translation):

Art. 29. The present Convention is concluded in the French language. Translations into Russian and Turkish will be made in the shortest possible period and verified by the Parties.

In the event of disagreement between the three texts, the French text shall be considered authentic.

/V. AUTHORITY

V. AUTHORITY TO CONCLUDE A TREATY

A Soviet text-book (Institut Prava, op. cit., p. 370) states that the determination of the authority to conclude a treaty lies with each state and is to be found in its Constitution. The Constitution of the U.S.S.R., adopted on 5 December 1936, places the authority to conclude treaties in various agencies of the state. It goes further, in that, as amended by the Law of 1 February 1944, it authorizes the sixteen "Union Republics" (Russian Soviet Federated Socialist Republic, Ukrainian Soviet Socialist Republic, Byelorussian Soviet Socialist Republic, Uzbek Soviet Socialist Republic, Kazakh Soviet Socialist Republic, Georgian Soviet Socialist Republic, Azerbaijan Soviet Socialist Republic, Lithuanian Soviet Socialist Republic, Moldavian Soviet Socialist Republic, Latvian Soviet Socialist Republic, Kirghiz Soviet Socialist Republic, Tajik Soviet Socialist Republic, Armenian Soviet Socialist Republic, Turkmen Soviet Socialist Republic, Estonian Soviet Socialist Republic, and Karelo-Finnish Soviet Socialist Republic) to participate in diplomatic exchanges and the conclusion of agreements.

The pertinent articles of the Constitution of the U.S.S.R. as they relate to the powers of the federal government and the governments of the sixteen Union Republics are (in translation as published by the Foreign Language Publishing House, Moscow, 1947):

Art. 14. The jurisdiction of the Union of Soviet Socialist Republics, as represented by its higher organs of state power and organs of state administration embraces:

a) Representation of the U.S.S.R. in international relations, conclusion, ratification and denunciation of treaties of the U.S.S.R. with other states, establishment of general procedure governing the relations of Union Republics with foreign states.

Art. 18a. Each Union Republic has the right to enter into direct relations with foreign states and to conclude agreements and exchange diplomatic and consular representatives with them.

The capacity of the Union Republics to participate in international relations was incorporated by amendment in the Constitution of each of the Union Republics. Thus, the Constitution of the Russian Soviet Federated Socialist Republic, as published by the Supreme Soviet of the R.S.F.S.R. in Moscow in 1948, reads (in translation):

Art. 19. The jurisdiction of the Russian Soviet Federated Socialist Republic, as represented by its higher organs of state power and organs of state administration embraces:

/((Yu)

(Yu) Establishment of representation of the R.S.F.S.R. in international relations.

Identical language is used in Article 19 of the Constitution of the Ukrainian Soviet Socialist Republic as published by the Supreme Soviet of the Ukrainian Soviet Socialist Republic in 1947, and in the Constitution of the Kazakh Soviet Socialist Republic, as published in English translation in Moscow, 1948. It is believed to be common to the Constitutions of all sixteen Union Republics.

The Soviet text-books published since the 1944 amendment conferring upon the Union Republics the authority to enter into direct relations with foreign states and to conclude agreements and exchange diplomatic representatives with them do not comment upon the language of the Constitutions of the Union Republics. As already indicated, these Constitutions have incorporated specifically only a part of the authority granted to the Republics by the U.S.S.R. Constitution, namely that part which relates to the exchange of diplomatic representation. No specific mention is made in the Constitutions of the Republics of the treaty powers, granted them by the 1944 Amendment to the U.S.S.R. Constitution.

The agencies of the U.S.S.R. specifically empowered to exercise the treaty power for the Soviet state are the Supreme Soviet of the U.S.S.R. and the Presidium of the Supreme Soviet of the U.S.S.R. This fact is established by two articles of the Constitution, one general and the other more specific. These read in translation:

Art. 31. The Supreme Soviet of the U.S.S.R. exercises all rights vested in the Union of Soviet Socialist Republics in accordance with Article 14 of the Constitution, in so far as they do not, by virtue of the Constitution, come within the jurisdiction of the organs of the U.S.S.R. that are accountable to the Supreme Soviet of the U.S.S.R., that is, the Presidium of the Supreme Soviet of the U.S.S.R., the Council of Ministers of the U.S.S.R., and the Ministries of the U.S.S.R.

Art. 49. The Presidium of the Supreme Soviet of the U.S.S.R.:

(g) In the interval between sessions of the Supreme Soviet of the U.S.S.R. releases and appoints Ministers of the U.S.S.R. on the recommendation of the Chairman of the Council of Ministers of the U.S.S.R., subject to subsequent confirmation by the Supreme Soviet of the U.S.S.R.;

(o) Ratifies and denounces international treaties of the U.S.S.R.;

(p) Appoints and recalls plenipotentiary representatives of the U.S.S.R. to foreign states;

The Constitution of the U.S.S.R. makes provision for an agency in each Union Republic to conduct the foreign relations of the Union Republic in

/the following

the following manner:

Art. 60. The Supreme Soviet of the Union Republic:

(e) Decides questions of representation of the Union Republic in its international relations.

The articles in the Constitution of the R.S.F.S.R. relating to this subject read as follows (in translation):

Art. 23. The Supreme Soviet of the R.S.F.S.R. exercises all rights vested in the R.S.F.S.R. in accordance with Articles 13 and 19 of the Constitution of the R.S.F.S.R., in so far as they do not, by virtue of the Constitution, come within the jurisdiction of the organs of the R.S.F.S.R. that are accountable to the Supreme Soviet of the R.S.F.S.R., that is, the Presidium of the Supreme Soviet of the R.S.F.S.R., the Council of Ministers of the R.S.F.S.R. and the Ministries of the R.S.F.S.R.

Art. 33. The Presidium of the Supreme Soviet of the R.S.F.S.R.:

(j) Appoints and recalls diplomatic representatives of the R.S.F.S.R. to foreign states.

It is to be noted that Article 60 of the U.S.S.R. Constitution makes no specific reference to the treaty power in listing the functions of the Supreme Soviet of the R.S.F.S.R., nor does Article 33 of the R.S.F.S.R. Constitution list this power specifically as one of the enumerated functions of the Presidium of the Supreme Soviet of the R.S.F.S.R. The authority of each Republic to conclude agreements appears to rest alone on Article 18a of the Constitution of the U.S.S.R.

A few of the Union Republics of the U.S.S.R. have concluded international agreements. Thus, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic have signed not only the Charter of the United Nations but also the Peace Treaties with Italy, Hungary, Rumania, Bulgaria, and Finland. The Ukrainian Soviet Socialist Republic has signed the Convention on the Regime of Navigation on the Danube of 18 August 1948. The Ukrainian and Byelorussian Soviet Socialist Republics signed with the Polish Committee of National Liberation an "Agreement on the Evacuation of Ukrainian and Byelorussian Population from the Territory of Poland and of Polish Citizens from the Territory of the Ukrainian S.S.R. and of the Byelorussian S.S.R." in September, 1944. (Information communiqué but not the text published in Vneshnyaya Politika Sovetskogo Soyuza v Period Otechestvennoi Voiny, Vol. II, Moscow, 1946, pp. 202-204. -- The Foreign Policy of the Soviet Union in the Period of the War for the Fatherland).

/An agreement

An agreement of similar character was signed on 22 September 1944, in Lublin between the Lithuanian Soviet Socialist Republic and the Polish Committee of National Liberation. (Information communiqué but not the text published in Idem, pp. 230-232). The Ukrainian and Byelorussian Soviet Socialist Republics have also signed conventions and protocols opened for signature under the auspices of the United Nations, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Protocol of 19 November 1948 bringing under international control drugs outside the scope of the convention of 13 July 1931 for limiting the manufacture and regulating the distribution of narcotic drugs.

The Council of Ministers of the U.S.S.R. also has a certain competence with regard to international agreements. The Constitution of the U.S.S.R. establishes this power. The pertinent provision reads in translation:

Article 68. The Council of Ministers of the U.S.S.R.:

(d) Exercises general guidance in the sphere of relations with foreign states;

A Soviet text-book (Institut Prava, op. cit., p. 371) lists the Council of Ministers of the U.S.S.R. together with the Supreme Soviet and the Presidium of the Supreme Soviet as the agencies of government having the right to conclude international treaties.

Practice of the U.S.S.R. indicates that the Council of Ministers has exercised such powers. For example, in an exchange of notes between Konstantin Umansky, Ambassador of the U.S.S.R. in the U.S.A. and Sumner Welles, Acting Secretary of State of the U.S.A., dated 2 August 1941, concerning a prolongation of the Trade Agreement of 4 August 1937 between the U.S.S.R. and the U.S.A., it is stated, as follows, in Ambassador Umansky's letter:

The Present Agreement shall be approved by the Council of People's Commissars of the U.S.S.R. and proclaimed by the President of the United States:

(Soviet Foreign Policy During the Patriotic War, Documents and Materials, Vol. I, June 22, 1941 - December 31, 1943, Translated by Andrew Rothstein, London, Hutchinson & Co., no date, p. 83).

At the time of the exchange of notes, the Council of Ministers of the U.S.S.R. was entitled the Council of People's Commissars.

/VI. THE PLENIPOTENTIARY

VI. THE PLENIPOTENTIARY FOR SIGNATURE

Soviet practice in the designation of plenipotentiaries for signature of a Treaty may be illustrated by the Preamble to the "Treaty on 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).

The Preamble reads as follows, in translation:

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics and the Presidium of the Great People's Congress of the People's Republic of Bulgaria, moved by a desire to assure the further development and strengthening of economic communication between both countries, have decided to conclude the present Treaty on Trade and Navigation and for that purpose have named as their Plenipotentiaries:

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics - Anastasius Ivanovich Mikoyan, Minister of Foreign Trade of the U.S.S.R.;

The Presidium of the Great People's Congress of the People's Republic of Bulgaria - Krist Dobrev, Minister of Trade and Industry of the People's Republic of Bulgaria,

Who, having exchanged their plenipotentiary powers and having found them to be in due and proper form and executed in accordance with the proper procedure, have agreed on the following:----

The U.S.S.R. has no Chief of State in the person of an individual, but is headed by what Joseph Stalin has defined as a "collegial President". In his speech of 25 November 1936 before the Eighth Extraordinary All-Union Congress of Soviets, Stalin declared (in translation):

According to the system of our Constitution, there must not be an individual President in the U.S.S.R., elected by the whole population on a par with the Supreme Soviet and able to put himself in opposition to the Supreme Soviet. The President of the U.S.S.R. is a collegium, it is the Presidium of the Supreme Soviet, including the President of the Presidium of the Supreme Soviet, elected, not by the whole population but by the Supreme Soviet and accountable to the Supreme Soviet. Historical experience shows that such a structure of the supreme bodies is the most democratic and safeguards the country against undesirable contingencies.

(Joseph Stalin, Leninism, Selected Writings, New York, International Publishers, 1942, p. 402).

The Second World War provided the occasion for the meeting of the Chief of State of the United States with the Head of Government of the U.S.S.R. and the Prime Minister of the United Kingdom. The Declaration of the Three Powers Concerning Iran, dated Teheran, 1 December 1943, indicates the practice of the

/U.S.S.R.

U.S.S.R. in this relatively unusual type of situation. The Declaration reads:

The President of the United States of America, the Premier of the U.S.S.R. and the Prime Minister of the United Kingdom, having consulted with each other and with the Prime Minister of Iran, desire to declare the mutual agreement of their three Governments regarding their relations with Iran.

(Soviet Foreign Policy During the Patriotic War, op. cit., p. 248; American Journal of International Law, Vol. 38 (1944), Suppl., p. 10).

A Soviet text-book (Institut Prava, op. cit., p. 372) indicates the authority of the Chief of State or the Head of a Government as follows, in translation:

The Chief of State, and also the Head of a Government require no special plenipotentiary powers to sign an international treaty, unless such is required by the legislation of the country concerned.

A Soviet plenipotentiary must obtain governmental approval of a draft treaty before he may sign. A Soviet Statute of 2 October 1925, which was in effect as late as 1 July 1937 (see Khronologicheskii Perechen' Zakonov S.S.S.R., po Sostoyaniyu na 1 Iyulya 1937 - Chronological List of Laws of the U.S.S.R. in effect on 1 July 1937 - Moscow, 1938, p. 8) reads as follows (in translation):

Art. 503. On the Procedure for Presenting International Treaties and Agreements Concluded in the name of the U.S.S.R. for approval, confirmation and ratification by the Government of the U.S.S.R.

The Central Executive Committee and Council of People's Commissars of the U.S.S.R. decrees:

1. Treaties and agreements, concluded with foreign states, before their signature in behalf of the U.S.S.R., shall be presented by the People's Commissariat for Foreign Affairs to the Council of People's Commissars of the U.S.S.R. for preliminary approval.

(Collection of Laws, U.S.S.R., 1925, Part I, No. 68, Art. 530).

The decree of 2 October 1925 also outlines the procedure which the People's Commissariat for Foreign Affairs was required to follow in presenting the draft for approval by the Government. The detail is omitted from this memorandum as not being directly pertinent to the subject under discussion.

VII. RATIFICATION

The right to ratify international treaties is conferred by the Constitution of the U.S.S.R. upon the supreme agencies of the state by Article 49 (quoted above). A special law was adopted by the Supreme Soviet of the U.S.S.R. at its Second Session on 20 August 1938, to implement the provisions of Article 49. This law reads, as follows (in translation):

Act Concerning the Procedure for Ratifying and Denouncing International Treaties of the U.S.S.R.

Article 1. In accordance with clause "1" of Article 49 of the Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, international treaties are ratified by the Presidium of the Supreme Soviet of the U.S.S.R.

Article 2. Peace treaties, treaties of mutual defense from aggression and treaties of mutual non-aggression concluded by the Union of Soviet Socialist Republics are subject to ratification.

Likewise international treaties, upon the conclusion of which the signatories agreed that they be subsequently ratified, are subject to ratification.

Article 3. International treaties that have been ratified are denounced by Ukase of the Presidium of the Supreme Soviet of the U.S.S.R. (Second Session of the Supreme Soviet of the U.S.S.R., August 10-21, 1938. Verbatim Report, Moscow, 1938, p. 678. -- This is an English translation of the official report in Russian).

Soviet practice indicates examples in which the procedure has been followed. The following ratifying law was adopted by the Supreme Soviet of the U.S.S.R. at its Ninth Session on 18 June 1942. It reads, in translation:

Ratification of the Treaty Between the Union of Soviet Socialist Republics and the United Kingdom of Great Britain Concerning a Military Alliance Against Hitlerite Germany and its Allies in Europe and Concerning Collaboration and Mutual Assistance after the War.

The Supreme Soviet of the Union of Soviet Socialist Republics, having heard the communication of the People's Commissar for Foreign Affairs, Comrade Vyacheslav Mikhailovich Molotov, concerning the conclusion of a Treaty between the Union of Soviet Socialist Republics and the United Kingdom of Great Britain concerning an Alliance in the war against Hitlerite Germany and its allies in Europe and concerning collaboration and mutual assistance after the war and the proposal of the Government concerning the ratification of the Treaty, decrees:

1. The foreign policy of the Government is approved.
2. The Treaty Between the Union of Soviet Socialist Republics and the United Kingdom of Great Britain concerning an Alliance in the war against Hitlerite Germany and its Allies in Europe and on collaboration

/and mutual

and mutual assistance after the war, concluded in the city of London on 26 May 1942 is ratified.

President of the Presidium
of the Supreme Soviet of the U.S.S.R. M. Kalinin

Secretary of the Presidium
of the Supreme Soviet of the U.S.S.R. A. Gorkin.

Moscow, the Kremlin.

18 June, 1942.

(Stenograficheskii Otchet Zasedaniya Verkhovnogo Soveta S.S.S.R., 18 Iyunya 1942 goda, Moscow, 1942, p. 53. -- Stenographic Record of the Session of the Supreme Soviet of the U.S.S.R., 18 June, 1942).

A similar ratifying law was adopted by the Supreme Soviet of the U.S.S.R. on 31 August 1939 for the "Treaty of Non-Aggression between the Soviet Union and Germany" (Vneocherednaya Che'vertaya Sessiya Verkhovnogo Soveta S.S.S.R., 28 Avgusta -- 1 Sentyabrya 1939 g., Stenograficheskii Otchet, Moscow, 1939, p. 237. -- Extraordinary Fourth Session of the Supreme Soviet of the U.S.S.R., 1 September, 1939, Stenographic Record).

The practice of ratification of treaties which are not "peace treaties, treaties of mutual defense and treaties of mutual non-aggression" is indicated by the publication of the following statement at the end of a Treaty, such as that with the People's Republic of Bulgaria, previously cited. The statement reads as follows:

Ratified by the Presidium of the Supreme Soviet of the U.S.S.R.,
13 July, 1948.

Ratifications exchanged, 7 August, 1948.

As has already been indicated in connection with the exchange of notes dated 2 August 1941, between Ambassador Umansky and Acting Secretary of State, Sumner Welles, prolonging the Trade Agreement between the U.S.S.R. and U.S.A., the Council of Ministers may approve an agreement without the necessity of presenting the agreement for ratification to any higher agency of government, if the subject matter does not require ratification under the law of the U.S.S.R. or of the other party.

The defense of a doctoral thesis on "Ratification of International Treaties" provides an opportunity for consideration of current thinking of Soviet Professors of International Law on the subject of ratification. (See Defense of Dissertation in the Institute of Law of the Academy of Sciences of the U.S.S.R., "The Ratification of International Treaties." Izvestiya Akademii Nauk S.S.S.R., Otdelenie Ekonomiki i Prava, No. 4, Iyul - Avgust (1948) p. 283 -- News of the
/Academy of

Academy of Sciences of the U.S.S.R., Section of Economics and Law). The thesis of the candidate, O. E. Polents, is stated as follows, in translation:

The significance of the institution of ratification is defined by its character; ratification has for its purpose the improvement of accuracy and reliability, and even of the significance of international documents. The institution of ratification is utilized by the U.S.S.R. in its struggle for the strengthening of international obligations and for the protection and securing of the interests of the Soviet State in the sphere of international relations.

The candidate then reviewed the history of the institution and reached the conclusion that ratification is necessary only when the constitutional law of a state requires it. He also found that:

Between the approval by the government and ratification there is a close similarity, which gives reason to think that approval is the same thing as ratification. Such a point of view is erroneous: approval is akin to ratification but it is not the same thing.

He then explained that there seemed to him to be a difference between the approving and ratifying agencies, a difference which he believed to be founded upon the class base of bourgeois states, in that ratification is usually the province of the Chief of State who represents only the very top level of the governing class. He found no such conflict of class interests in the U.S.S.R. between the approving and ratifying agencies. Finally the candidate stated:

Before ratification of a treaty, it does not exist, it is only a draft, whose text is established precisely, agreed upon between the parties and signed by the plenipotentiaries for the purpose.

Professor A. D. Keilin, one of the official opponents, found that he could not agree with this final proposition. He asked:

Can one really declare that the peace treaties which had been worked out at the Paris Peace Conference and at the meeting of the Council of Foreign Ministers in New York in 1946 were only drafts after their signature until they were ratified? It is not chance that the attention of public opinion in all countries was directed to the concluding of the agreement, that is to the signing of the treaties and not to their ratification.

Both Professor Keilin and the candidate agreed that the Protocol of Exchange of Ratifications adds nothing to the process of concluding a treaty.

The second official opponent, E. M. Fabrikov, agreed with Professor Keilin that it is wrong to say that a treaty is only a draft until ratified. He declared that ratification is not a method of concluding a treaty but an act of supreme authority, approving a treaty which has already been concluded.

/Such a discussion

Such a discussion suggests that Soviet jurists are of the opinion that while a state is not required to perform the obligations stipulated in a treaty requiring ratification by its terms, unless ratifications have been exchanged, good faith will require that pending the coming into force of the treaty that State should for a reasonable time after signature refrain from taking action which would render performance by any party of the obligations stipulated impossible or more difficult.

VIII. DATE OF COMING INTO FORCE

There is no doubt that in spite of the comments in the above cited discussion of a dissertation, a treaty requiring the exchange of ratifications by its terms has no binding force until the exchange occurs. See Institut Prava, op. cit., p. 307:

The exchange of ratifications and the deposit of ratifications have great legal importance.

In bilateral agreements, there is often included a provision to the effect that the signed and ratified treaty comes into force from the moment of exchange of ratifications by the parties.

In multilateral conventions sometimes there is found the so-called formula of 'all participants', whose meaning is that a given treaty comes into force only on condition that it is ratified by all parties to it, and on deposit by them of their ratifications with the depositary state (see, for example, Paragraph 1 of Art. 3 of the Briand-Kellogg Pact of 27 August 1928).

Most Soviet treaties state in express terms the event on which they depend for coming into force. For example: "Protocol on Extension of the Treaty of Neutrality and Mutual Non-Aggression Between the Union of Soviet Socialist Republics and Afghanistan", signed in Moscow, 29 March 1936. (Collection of Treaties, etc., U.S.S.R., Vol. IX, Moscow, 1938, p. 37). The pertinent provision reads, in translation:

Article 2. The present Protocol is subject to ratification. It shall come into force on the day ratifications are exchanged. Exchange of ratifications shall take place in the city of Kabul within the shortest period.

The note below the treaty states that the exchange of ratifications occurred in the city of Kabul on 3 September 1936.

The "Protocol of Mutual Assistance between the Union of Soviet Socialist Republics and the Mongolian People's Republic", signed in the city of Ulan-Bator-Khoto on 12 March 1936, says, in translation (Collection of Treaties, etc., U.S.S.R., Vol. IX, Moscow, 1938, p. 43):

Article 4. This Protocol is in two copies in the Russian and Mongolian languages, both of which texts have the same force. It shall come into force from the moment of its signature and shall remain in force for ten years from that time.

The coming into effect of a treaty requiring ratification by its terms was not delayed until ratification occurred in the "Treaty of Establishment, Commerce and Navigation between the Union of Soviet Socialist Republics and /Iran," signed

Iran," signed in Teheran on 27 August 1935. (Collection of Treaties, etc., U.S.S.R., Vol. IX, Moscow, 1938, p. 129 - CLXXVI:299 LNTS). The pertinent provisions read, in translation:

Article XVIII. The present treaty shall be ratified by the legislative organs of both Contracting Parties, and the exchange of ratifications shall take place in Moscow.

It is concluded for a term of three years, commencing on 22 June 1935 (1 Tira 1914). In the event that one of the Contracting Parties wishes to terminate this Treaty before the expiration of the aforementioned term, it must notify the other Party of its intention in written form at the end of the second year. If this is not done, the Treaty shall be considered as automatically prolonged.

The note below states that ratifications were exchanged in Moscow on 8 June 1936, which was nearly one year after the date on which the three year term of the Treaty began running, and on which it presumably came into effect. It is also to be noted that the date the term began running was two months earlier than the date of signature of the Treaty.

The coming into effect of a treaty, requiring ratification, before the exchange of ratifications was expressed more clearly in the "Agreement to Extend the Commercial Agreement Between the Union of Soviet Socialist Republics and the French Republic," signed in Paris on 6 January 1936 (Collection of Treaties, etc., U.S.S.R., Vol. IX, Moscow, 1938, p. 164). The pertinent article reads, in translation:

Article 7. This Agreement shall be ratified in the shortest possible time, and the exchange of its ratifications shall take place in Moscow.

Until its ratification it shall come into force temporarily from the day of its publication.

The translation into Russian shall be made in the shortest possible time and verified by the Parties, after which both texts shall have equal force.

A subsequent prolongation of the same Commercial Agreement between the U.S.S.R. and France was even more specific on the date of coming into force before ratification, and without waiting for publication. See "Agreement to Extend the Commercial Agreement Between the Union of Soviet Socialist Republics and the French Republic," signed in Paris on 17 December 1936. (Collection of Treaties, etc., U.S.S.R., Vol. IX, Moscow, 1938, p. 177). The pertinent article reads in translation:

Article IV. This Agreement shall be ratified in the shortest time possible and the exchange of ratifications shall take place in Moscow.

/Before the

Before the ratification, it shall come into force temporarily on 1 January 1937.

The translation into Russian shall be made in the shortest possible time and verified by the Parties, after which both texts shall have equal force.

Another variation appears in the "Trade Treaty between the Union of Soviet Socialist Republics and the Swiss Confederation," signed in Moscow on 17 March 1948. (Vedomosti Verkhovnogo Soveta, S.S.S.R., No. 13 (560), 27 March 1948, p. 4). The pertinent article reads, in translation:

Article 13. This Treaty is concluded for a term of one year.

The Treaty shall be ratified in the shortest possible period and shall come into force 20 days after the exchange of ratifications, which shall take place at Bern.

At the end of the treaty there is printed the following note:

Ratified by the Presidium of the Supreme Soviet of the U.S.S.R.,
13 July 1948.

Ratifications exchanged on 11 August 1948.

Treaty came into force 20 days after the exchange of ratifications.

IX. ACCESSION

A Soviet text-book (Institut Prava, op. cit., p. 387) treats the question of accession in the following words, in translation:

In the literature of international law an attempt is frequently met with to draw a distinction between 'adhesion', i.e., the declaration of some state concerning recognition of the binding effect of a given treaty for it, which has already been signed by other states, and 'accession', i.e., a solemn joining of a third state to a treaty, with complete adoption of it on a par with the signatories.

The difference between the two must be considered, in fact, without legal importance. It would be more correct to speak only of the different forms of adherence to a treaty.

Adherence to a signed multipartite treaty is usually carried out through the signature of the text of the treaty or by issuing a declaration of adherence.

As an illustration of the second method there is the example of the declaration of 2 December 1927 on the adherence of the U.S.S.R. to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare, signed in Geneva on 17 June 1925.

Other examples of Soviet adherence to multipartite treaties are the following: "Treaty Concerning the Archipelago of Spitsbergen," concluded in Paris on 9 February 1920. The Treaty provided as follows (Collection of Treaties, etc., U.S.S.R., Vol. IX, Moscow, 1938, p. 53 : II: 1 : 8; and II:7 LNTS):

Article 10. Until the recognition by the High Contracting Parties of a Russian Government shall permit Russia to adhere to the present Treaty, Russian nationals and companies shall enjoy the same rights as nationals of the High Contracting Parties. -----

Third Powers will be invited by the Government of the French Republic to adhere to the present Treaty duly ratified. This adhesion shall be effected by a communication addressed to the French Government, which will undertake to notify the other Contracting Parties.

The adherence of the U.S.S.R. was published in the Collection of Laws of the U.S.S.R., 1935, Part II, No. 17, Article 138, as taking effect on 7 May 1935.

Adherence of the U.S.S.R. to the "Convention for the Suppression of the Circulation of and Traffic in Obscene Publications", signed in Geneva on 12 September 1923, was recorded in the Collection of Laws of the U.S.S.R., 1936, Part II, No. 21, Article 179, as occurring on 8 July 1935, after the U.S.S.R. had become a member of the League of Nations, by notice to the Secretary-General

/to whom

to whom notice of adherence of non-signatories was required to be given by Article IX.

Adherence to the "Treaty for the Renunciation of War" of 27 August 1928 was likewise set forth in a Declaration, dated 6 September 1928, communicated to the United States of America to whom adherences were to be communicated in accordance with Article III of the Treaty. (Collection of Laws, U.S.S.R., 1929, Part II, No. 41, Article 234).

The procedure which the U.S.S.R. follows domestically in making a decision to adhere to a treaty was set forth in the Decree of 2 October 1925. (Collection of Laws, U.S.S.R., 1925, Part I, No. 68, Article 503). This decree, which was still in force on 1 July 1937, as indicated supra, after the new U.S.S.R. Constitution had come into effect on 5 December 1936, read, as follows, in translation:

Article 5. In the event that it becomes necessary for the U.S.S.R. to adhere to an international treaty or agreement which is in force, the right to adhere to which has been extended to all states, the draft of a decree of adherence shall be transmitted by the People's Commissariat for Foreign Affairs to the Council of People's Commissars of the U.S.S.R. in the usual manner. On approval of the draft, the decree shall be published in the Collection of Laws and Orders of the Worker-Peasant Government of the U.S.S.R.

/s. RESERVATIONS

X. RESERVATIONS

A Soviet textbook (Institut Prava, op. cit., p. 388) states, in translation:

Reservations at the time of signature of a treaty require that the parties to the treaty become familiar with them prior to signature and agree to them (if only by remaining silent). As a general rule reservations must be accepted and countersigned by all parties to the treaty (for example, by an exchange of notes, in the protocol of signature, or otherwise).

A "Protocol of Signature" was attached to the Naval Agreement between the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland, signed in London on 17 July 1937. (Vedomosti Verkhovnogo Soveta, S.S.S.R., No. 6, 5 June 1938, p. 1-2; CLXXXVII:93 and 122 INTS). The English text reads as follows:

Protocol of Signature

At the moment of signing the Agreement bearing this day's date, the undersigned, duly authorized to that effect by their respective Governments, have agreed as follows:

1. If, before the coming into force of the above-mentioned Agreement, the naval construction of any Power, or any change of circumstances, should appear likely to render undesirable the coming into force of the Agreement in its present form, the Contracting Governments will consult as to whether it is desirable to modify any of its terms to meet the situation thus presented.-----

The text of the Agreement itself incorporated some provisions, which the authors of the aforementioned textbook call "reservations". Thus, Part II of the treaty, entitled "Limitations," provided, as follows:

2. It is understood, however, that the Soviet Government shall not be bound by the limitations and restrictions of this Part of the present Agreement insofar as the Soviet Far Eastern naval forces are concerned, so long as there shall not be concluded a special agreement between the U.S.S.R. and Japan on this subject.-----

The U.S.S.R. filed a reservation when it entered the League of Nations in 1934. In a letter from the People's Commissar for Foreign Affairs addressed to the President of the XV Assembly of the League of Nations, dated 15 September 1934 the following paragraph, in translation, appears (Collection of Treaties, etc., U.S.S.R., Vol. VIII, Moscow, 1935, p. 36):

In as much as Articles 12 and 13 of the Covenant propose that States consider settling disputes through arbitration or judicial procedure, the Soviet Government deems it necessary to make it clear that, in its opinion, such a procedure cannot be applied to disputes relating to questions arising before its entrance into the League.

/Permit me

Permit me to express the hope that this declaration will be accepted by all Members of the League in the same spirit of sincere desire for international collaboration and security for all nations, as it has been given.

Further comment on the subject of reservations is to be found in the report of the defense of O.E. Polents' dissertation, to which reference has already been made in connection with ratification. The official opponent, Professor A.D. Keilin stated (p. 285) that he believed the author of the dissertation to have been correct in writing:

Reservations at the time of ratification cannot be unilateral: they must receive the agreement of all states who are parties to the international agreement.

Professor Keilin believed this fact to be supported by the resolution of the Assembly of the League of Nations of 25 September 1931, on the subject of reservations.

XI. REGISTRATION AND PUBLICATION

An early statute of the U.S.S.R. provided for publication of treaties in the following terms, in translation, (Decree of 22 August 1924, Collection of Laws, U.S.S.R., 1924, Part I, No. 7, Article 71):

Art. 11. Treaties, agreements and conventions, concluded by the U.S.S.R. with foreign states shall be published in the "Collection of laws and orders of the Worker-Peasant Government of the U.S.S.R." in accordance with the following procedure:

(a) Treaties, agreements and conventions subject to ratification by the U.S.S.R. or coming into force on the exchange of declarations by the signatory parties shall be published only after this exchange of ratifications or declarations;

(b) Treaties, agreements and conventions coming into force on signature by the parties or after a definite period after signature or on publication of them in the official organ of the U.S.S.R. shall be published when they are concluded ----

By amendment dated 10 September 1926 (Collection of Laws, U.S.S.R., 1926, Part I, Article 454), it was provided, in translation:

---- international treaties, agreements and conventions of the U.S.S.R. (shall be published) in Part II of the aforementioned 'Collection'.

After the new Constitution of the U.S.S.R. came into effect on 5 December 1936, a new official periodical began publication to contain the laws and decrees of the Supreme Soviet of the U.S.S.R. and its Presidium. From 1938, when the first number appeared, the former Collection of Laws of the U.S.S.R. was discontinued. No statute has been found amending the decree of 22 August 1924, cited above, to require publication in a differently named official journal, but Treaties, Convention and Agreements of the U.S.S.R. are, in fact, currently published in the official periodical entitled "Vedomosti Verkhovnogo Soveta S.S.S.R."

The Soviet text-book referred to above (Institut Prava, op. cit., p. 390) advises its readers, without comment, of Article 102 of the Charter of the United Nations requiring publication of all treaties and international agreements concluded by any Member of the United Nations, and remarks that the General Assembly adopted rules for registration on 14 December 1946. A Russian translation of these rules was published in "Sovetskoe Gosudarstvo i Pravo" (Soviet State and Law), No. 3 (1948), pp. 57-9.

/XII. INTERPRETATION

XII. INTERPRETATION OF TREATIES

The Soviet approach to the interpretation of treaties is indicated by the following passage from the text-book referred to above (Institut Prava, op. cit., p. 403) which reads, in translation, as follows:

Interpretation of an international treaty involves the clarification of purposes and substance and the conditions for the most correct application of the treaty, as well as the clarification of specific articles of a treaty or of the treaty as a whole in the application of it to some concrete situation in international relations.

The clarification of the will of both parties is the task of interpretation.

Interpretation of an international treaty may be based upon an examination of the text of the treaty by means of an etymological and grammatical analysis of words and specific phrases of the treaty.

Interpretation may be based on an analysis of the course of historical events which created the necessity for the conclusion of a given international treaty.

Interpretation of a treaty is possible by means of comparing some articles with others or with customs of international intercourse, etc.

A recent example of a method of interpretation utilized by the U.S.S.R. was provided by Foreign Minister Andrei Y. Vyshinsky's argument at the Danube Conference of 1948. In seeking to determine the meaning of Article 7 of the 1921 Convention concerning the European Commission of the Danube, he compared it with Article 42 and with similar language in the Charter of the United Nations on voting in the Security Council, and the general purposes of the Commission. (See Academician A. Y. Vyshinsky, *The Danube Conference and Some Questions of International Law*, *Sovetskoe Gosudarstvo i Pravo*, 1948, No. 10, p. 16 at pp. 23-24).

XIII. PACTA SUNT SERVANDA

Foreign Minister Andrei Y. Vyshinsky has written as follows, in translation, of the principle Pacta Sunt Servanda:

The generally accepted means of amending or terminating international treaties, agreements, and conventions are well known. In this connection the classic principle of international law 'pacta sunt servanda' has force - namely that treaties must be carried out, which means that no party to a treaty may unilaterally consider itself free of obligations assumed under a given treaty or unilaterally alter it without the consent of all parties to it. This principle was reflected most distinctly in the London Protocol of 1871 and reaffirmed in Art. 19 of the Covenant of the League of Nations. (Academician A. Y. Vyshinsky, op. cit., at p. 21).

XIV. EFFECT OF LATER TREATIES

Foreign Minister Andrei Y. Vyshinsky has argued as follows in support of a principle that states not parties to an original treaty should not be prevented from joining with some of the parties to an existing treaty because one or another party to the original agreement desire no change in the situation. In the article previously cited, he states, in translation (at p. 22):

International treaties concluded by the parties must be respected and may not be changed without the consent of all signatories. This is an undisputed principle of international law. But, can one, resting upon this principle, reach the conclusion that a treaty which has been concluded for some reason or other or for some circumstance or other by any given group of states is inviolate, permanently in force, binding all other states which have no relationship to the given treaty? Can one consider it a normal situation when a state which is not a party to some treaty is considered bound by the treaty and to such an extent that it is denied the right to conclude new treaties, even on the same subject, except with the consent of the states which had previously signed a treaty on the same subject?

It is sufficient to put these questions to make any other answer than a negative one clearly impossible.

Various instances are to be found in which the U.S.S.R. has concluded a treaty to supersede an earlier treaty between itself and the same party. An example is the 'Convention Between the Union of Soviet Socialist Republics and the Polish Republic on the Method of Investigating and Settling Border Incidents and Conflicts' signed in Moscow on 3 June 1933. (Collection of Treaties, etc., U.S.S.R, Vol. VIII, 1935, p. 79; CXLI:265 INTS). Article 18 of this Convention reads, as follows, in translation:

/Art. 18.

Art. 18. This Convention comes into force 45 days after notification that it has been approved by both Governments.

From the date on which it enters into force, the "Agreement Between the Union of Soviet Socialist Republics of the first part and the Polish Republic of the second part on Settlement of Border Conflicts, concluded in Moscow on 3 August 1925, loses force.

It is Soviet practice to specify, as was done in the case cited, the earlier treaties which are superseded.

XV. EFFECT OF GOVERNMENTAL CHANGES

The Soviet Government early took the position that while a successor government is normally bound by the obligations assumed by its predecessor governments, this principle does not apply when there has been a social revolution. The principle has been stated by Professor Eugene A. Korovin, as follows (Soviet Treaties and International Law, American Journal of International Law, Vol. 22 (1928), p. 753 at 763):

The train of argument adopted by the Soviets is somewhat as follows: Every international agreement is the expression of an established social order, with a certain balance of collective interests. So long as this social order endures, such treaties as remain in force, following the principle pacta sunt servanda, must be scrupulously observed. But if in the storm of a social cataclysm one class replaces the other at the helm of the state, for the purpose of reorganizing not only economic ties but the governing principles of internal and external politics, the old agreements, in so far as they reflect the pre-existing order of things, destroyed by the revolution, become null and void. To demand of a people at last freed of the yoke of centuries the payment of debts contracted by their oppressors for the purpose of holding them in slavery would be contrary to those elementary principles of equity which are due all nations in their relations with each other. Thus in this sense the Soviet Doctrine appears to be an extension of the principle of rebus sic stantibus, while at the same time limiting its field of application by a single circumstance - the social revolution.

The principle was set forth officially in the memorandum submitted at the Genoa Conference on 20 April 1922. It reads as follows:

If the Soviet authority has refused to take over the obligations of former governments, or to satisfy the claims of persons who have suffered losses caused by measures of domestic policy, such as nationalization of enterprises, the municipalization of dwellings, the requisition or confiscation of property, it has not been because it was unable or uninclined to fulfill the obligations, but because of matters of principle and political necessity.

The Revolution of 1917 completely destroyed all old economic, social and political relations, and by substituting a new society for the old one with the strength of the sovereignty of a revolting people, has transferred the state authority in Russia to a new social class. By so doing it has severed the continuity of all civil obligations which were essential to the economic life of the social class and which have fallen with it -----

(See Klyuchnikov, Y. V. and Sabanin, A. V., *Mezhdunarodnaya Politika Noveishego Vremeni v Dogovorakh, No'sakh i Deklaratsiyakh*, Part 3, Vol. I, p. 179 (Moscow, 1928) - International Politics of Modern Times in Treaties, Notes and Declarations).

/In keeping

In keeping with this principle the Soviet Government enacted a decree nullifying foreign loans (28 January 1918, Collection of Laws, R.S.F.S.R., 1917-1918, No. 27, Article 353) and resisted efforts of foreign states to recover for their citizens the value of confiscated property.

To clarify the situation as to which treaties are to be continued in force after a social revolution, the U.S.S.R. negotiated a treaty with Great Britain, signed in London on 8 August 1924. By this treaty, which was not subsequently ratified, the treaties between the Russian Imperial Government and Great Britain were divided into two groups, those considered as no longer having force being listed in Article II and those considered as having force being listed in Article III. Multilateral conventions recognized by both parties as continuing in force for them were listed in Article IV. (See E. A. Korovin, *Mezhdunarodnye Dogovori i Akty Novogo Vremeni*, Moscow, 1924, pp. 243-246. *International Treaties and Acts of Modern Times*).

The treaty was negotiated in fulfillment of the suggestion in a note signed by the Plenipotentiary of the U.S.S.R. in London on 8 February 1924 and addressed to the Prime Minister, in which the following was said, in translation:

In accordance with the resolution of the Second Congress of Soviets of the U.S.S.R., declaring that one of its basic aspirations is friendly collaboration between the peoples of Great Britain and the Soviet Union, the Union Government declares that it is ready to discuss and decide in a friendly manner all questions arising directly or indirectly from the act of recognition.

In view of the foregoing the Government of the U.S.S.R. is prepared to come to agreement with the British Government on the question of replacing old treaties which have lost legal force as a result of war and post-war events or which have been abrogated.

For this purpose, the Soviet Government has the intention of sending to London in the immediate future representatives, provided with the necessary authority for settling existing mutual claims, as well as for seeking a means of re-establishing Russian credit in Great Britain -----

(Collection of Treaties, etc., U.S.S.R., Vol. I-II, Moscow, 1928, pp. 14-15).

It will be noted that neither the U.S.S.R.'s note nor the treaty named specifically the revolution as the reason for review, but used the term "war and post-war events."

XVI. EFFECT OF SEVERANCE OF DIPLOMATIC RELATIONS

Two early cases of severance of diplomatic relations occurred at times when treaties were in force between the U.S.S.R. and the country concerned. One case was on the initiative of the U.S.S.R. and the other on the initiative of the counter-party. In the latter instance, that with Great Britain, there was in force at the time when diplomatic relations were severed on 26 May 1927 the Trade Treaty of 16 March 1921 (Collection of Treaties, etc., U.S.S.R., Vol. I, Moscow, 1924, No. 5; American Journal of International Law, Vol. 16 (1922), Suppl., p. 141). In a note from the Principal Secretary of State for Foreign Affairs of Great Britain to the Chargé d'Affaires of the U.S.S.R. in London, dated 23 February 1927, it had been said:

----- His Majesty's Government are not concerned with the domestic affairs of Russia nor with its form of Government. All they require is that that Government should refrain from interference with purely British concerns and abstain from hostile action or propaganda against British subjects. But they consider it necessary to warn the Union of Soviet Socialist Republics in the gravest terms that there are limits beyond which it is dangerous to drive public opinion in the country, and that a continuance of such acts as are here complained of must sooner or later render inevitable the abrogation of the Trade Agreement the stipulations of which have been so flagrantly violated, and even the severance of ordinary diplomatic relations.

(British Parliamentary Papers, Russia No.3(1927), Cmd.2895, A Selection of Papers dealing with the Relations between His Majesty's Government and the Soviet Government 1921-1927, pp. 49-50. Also in Klyuchnikov, Y.V., and Sabanin, A.V., Mezhdunarodnaya Politika Noveishego Vremeni v Dogovorakh, Notakh i Deklaratsiyakh, Part III, Vol. I, Moscow, 1928, p. 365).

In response the People's Commissar for Foreign Affairs of the U.S.S.R. wrote the British Chargé d'Affaires in a note, dated 26 February 1927, in part, as follows (in translation):

8. At the end of his note Sir Austin Chamberlain found it appropriate and proper to threaten complete severance of commercial and diplomatic relations in the event that the Soviet Government did not meet new demands, which have not arisen out of existing Anglo-Soviet agreements and mutual formal obligations. In declaring that threats against the U.S.S.R. can frighten no one in the U.S.S.R. the Soviet Government permits itself to affirm its conviction that the conclusion of a commercial agreement in 1921, as well as subsequent establishment of diplomatic relations conformed to the interests and needs both of the peoples of the U.S.S.R. and of the British Empire. If the present British Government supposes that the termination of Anglo-Soviet commercial and all other relations meets the needs of the English people and is advantageous for the British Empire and

/for the

for the affairs of the whole world, then it will, of course, act accordingly, accepting for itself full responsibilities for the consequences of its acts. ----

When diplomatic relations were severed on 26 May 1927, the commercial agreement of 16 March 1921 was abrogated, although Soviet commercial organizations were permitted to remain in London. The U.S.S.R.'s Collection of Treaties (Vol. I-II, Moscow, 1928, p. 12) publishes the title of the agreement of 16 March 1921 with the notation "Lost Force". It was not restored to force when relations were resumed on 3 October 1929, but a new "Temporary Commercial Agreement" was concluded in London on 16 April 1930. (Collection of Treaties, etc., U.S.S.R., Vol. VI, Moscow, 1931, p. 37).

When diplomatic relations between the U.S.S.R. and China were suspended on 6 April 1927, the "Treaty on Basic Principles for the Settlement of Questions," dated 31 May 1924 (Collection of Treaties, etc., U.S.S.R., Vol. I-II, Moscow, 1928, p. 30; American Journal of International Law, Vol. 19 (1925), Suppl., p. 53) appears not to have been abrogated, either in express terms or in practice.

The exchange of notes on the occasion of the withdrawal of the Soviet Embassy from Peking on 9 April 1927 makes no reference to the Treaty of 31 May 1924. (See Note of M.M. Litvinov to Chen-Yen-Shi, dated 9 April 1927, Klyuchnikov and Sabanin, *op. cit.*, Part III, Vol. I, p. 373-5).

The Treaty of 31 May 1924 contained in Article IX the principles under which the Chinese Eastern Railway was to be operated, and these were supplemented by an "Agreement for the Provisional Management of the Chinese Eastern Railway." Following the settlement of the dispute of 1929 over the fulfillment by China of her obligations, a "Protocol Concerning the Regulation of the Dispute between China and the U.S.S.R." was signed at Khabarovsk on 22 December 1929. (Sabanin, A. V., *Mezhdunarodnaya Politika v 1929 godu*, Moscow, 1931, p. 193. *International Politics in 1929*). Article 1 of the Protocol stated, in translation: /an English text with slightly different language is in the China Year Book, 1931, p. 497/

1. Point 1 of the preliminary conditions of the Union Government is understood by both parties to be in complete conformity with the telegram of Acting People's Commissar for Foreign Affairs, Mr. Litvinov, dated 27 November of this year and with the Nikolsk-Ussuri Protocol of 3 December of this year, as reestablishing the position existing before the dispute and based on the Mukden and Peking Agreements.

/This reference

This reference to the Peking Agreement seems to indicate that the U.S.S.R. considered the Treaty of 31 May 1924, signed in Peking, to have survived suspension of diplomatic relations in 1927 and complete severance of consular ties on 18 July 1929. The Treaty of 31 May 1924 was listed in the U.S.S.R.'s Collection of Treaties, etc., Vol. VI, Moscow, 1931, p. 185, without notation as to its having lost force. The agreement to resume diplomatic relations was made in Geneva on 12 December 1932. (Collection of Treaties, etc., U.S.S.R., Vol. VII, Moscow, 1933, p. 5).

Severance of diplomatic relations with the Polish Government on 25 April 1943 was notified to the Polish Ambassador in Moscow by a note, ending with the following paragraphs:

All these circumstances compel the Soviet Government to recognize that the present Government of Poland, having sunk so low as to enter the path of accord with the Hitlerite Government, has in effect discontinued allied relations with the U.S.S.R. and has adopted a hostile attitude towards the Soviet Union.

On the foundation of all the foregoing, the Soviet Government has decided to interrupt relations with the Polish Government.

(See Soviet Foreign Policy During the Patriotic War, Documents and Materials, Vol. I, June 22, 1941 - December 31, 1943, translated by Andrew Rothstein, London, no date, at p. 203).

Thereafter the Soviet Government treated the Polish Government in Exile as not representing the Polish State, but no general statement was issued on agreements with Poland, such as that concerning the evacuation of the Polish Army from the U.S.S.R.

XVII. EFFECT OF TERRITORIAL CHANGES

After the Union of Soviet Socialist Republics had been formed on 30 December 1922 by four Soviet Socialist Republics (Russian Soviet Federated Socialist Republic, Ukrainian Soviet Socialist Republic, Byelorussian Soviet Socialist Republic, and Transcaucasian Soviet Federated Socialist Republic) the People's Commissariat for Foreign Affairs of the U.S.S.R. sent a notice on 23 July 1923 to the representatives of foreign states maintaining missions in Moscow. The pertinent part of this notice reads (in translation):

--- the People's Commissariat for Foreign Affairs of the U.S.S.R. is given the responsibility for the execution in the name of the Union of all of its international relations, including the execution of all treaties and conventions concluded by the aforementioned Republics with foreign states, which treaties and conventions shall remain in force in the territories of the respective republics.

(Collection of Treaties, etc., U.S.S.R., Vol. I, Moscow, 1924, p. 24).

Similar notifications were sent when the Turkmen and Uzbek Soviet Socialist Republics entered the U.S.S.R., but no record has been found of such notices when the Latvian, Lithuanian and Estonian Soviet Socialist Republics entered the U.S.S.R. in 1940. It may be that the doctrine of abrogation of a treaty following a social revolution, which doctrine has been expressed above, was applied in these instances.

/XVIII. VIOLATION OF

XVIII. VIOLATION OF TREATY OBLIGATIONS

Soviet practice has been to consider a treaty as annulled when a party to it fails to perform in accordance with its terms. Examples from Soviet practice are the instances in which the "Treaty of Non-Aggression" concluded with Finland on 21 January 1932 was declared by the U.S.S.R. to have been annulled by Finland's systematic violation of its obligations under the Treaty. A note of 27 November 1939 communicated this decision to the Finnish Government (League of Nations Official Journal, 1939, p. 527).

A similar decision was communicated to Yugoslavia on 28 September 1949, terminating the Soviet-Yugoslav "Treaty of Friendship, Mutual Assistance and Post-war Cooperation". The text of the note follows (as translated and published in U.S.S.R. Information Bulletin, Washington, D. C., Vol. IX, No. 19, 7 October 1949, p. 595):

In the course of the trial, which ended in Budapest on September 24, of the state criminal and spy Rajk and his accomplices, who simultaneously were agents of the Yugoslav Government, it was revealed that the Yugoslav Government had already for a long time been conducting hostile, subversive activity against the Soviet Union, hypocritically camouflaged by mendacious statements about friendship with the Soviet Union.

The trial in Budapest has also shown that the leaders of the Yugoslav Government have conducted and continue their hostile and subversive work against the U.S.S.R. not only upon their own initiative, but also on direct instructions from foreign imperialist circles.

The facts disclosed at this trial have shown that the present-day Yugoslav Government is fully dependent on foreign imperialist circles and that it has become an instrument of their aggressive policy, a fact which has actually led to the liquidation of the sovereignty and independence of the Yugoslav Republic.

All of these facts show that the treaty of friendship, mutual assistance, and post-war co-operation between the U.S.S.R. and Yugoslavia concluded April 11, 1945, has been rudely trampled upon and torn to pieces by the present-day Yugoslav Government.

On the aforesaid grounds the Soviet Government declares that the Soviet Union considers itself henceforth free from the obligations proceeding from the aforementioned treaty.

On behalf of the U.S.S.R. Government
Deputy Minister for Foreign Affairs Gromyko

/XIX. REBUS SIC

XIX. REBUS SIC STANTIBUS

The text-book cited previously (Institut Prava, op. cit., p. 407) states the following (in translation) with respect to annulment of a treaty because of a change in the state of facts under which the treaty was signed:

Annulment of an international treaty is sometimes dependent, in the opinion of some representatives of the science of international law, upon a change in that state of facts whose continued existence was envisaged when the treaty was concluded (*clausula rebus sic stantibus*).

One must bear in mind, however, that the condition of a continuing state of facts to which reference is made is often treated rather broadly, and even in the sense that every change in the international situation gives the right to annul a treaty.

Such an interpretation of the condition to which reference is made has been used by aggressive countries for self-justification of their cut-throat policy.

International law forbids unilateral arbitrary breach of a contract.

Application of this principle to a concrete situation may be followed in the discussion of the legal situation on the Danube by Foreign Minister Andrei Y. Vyshinsky. He has written (in translation):

But, of course, there is to be found much of great importance not in legal considerations but in historical conditions - the historical changes which have occurred in the life of the Danube peoples and which could not have failed to have an influence on such an important question as Danube navigation. The Council of Foreign Ministers took that into consideration, adopting in 1946 at New York the well-known decision on the necessity to call a conference of the Danubian states as well as of the United States of America, Great Britain and France to work out, as it says in this decision, a new convention on the regime of navigation on the Danube. Moreover, the same Council of Foreign Ministers, as well as the Paris Peace Conference of 1946 included in the Peace Treaties with Hungary, Bulgaria, and Rumania corresponding articles devoted to the Danube. These articles provided that "Navigation on the Danube shall be free and open for the nationals, vessels of commerce, and goods of all States, on a footing of equality in regard to port and navigation charges and conditions for merchant shipping. The foregoing shall not apply to traffic between ports of the same State."

This very same text was put into the Convention adopted at the Belgrade Conference of 1948 as the first article in this Convention.

These facts say that the Council of Foreign Ministers already two years ago was of the opinion that the old Convention of 1921 was dead. The Paris Peace Conference of 21 states in 1946-1947 also thought so.

(A. Y. Vyshinsky, The Danube Conference and Some Questions of International Law (in Russian), Sovetskoe Gosudarstvo i Pravo, No. 10, 1948, p. 16 at p. 25).

/XX. DURESS

XX. DURESS

In the early days of its existence the new Soviet Russian Republic signed a Treaty of Peace at Brest-Litovsk on 3 March 1918. This treaty was subsequently denounced in a Decree of 13 November 1918. The pertinent part of the text of the decree denouncing the treaty reads, in translation, as follows (Collection of Laws, R.S.F.S.R., 1918, Part I, No. 95, Art. 947):

To the peoples of Russia, to the population of all occupied regions and lands.

The All-Russian Central Executive Committee of Soviets declares solemnly to all that the conditions of peace with Germany, signed in Brest on 3 March 1918, have been deprived of effect and meaning. The Brest-Litovsk treaty (as well as the supplementary Agreement signed in Berlin on 27 August and ratified by the All-Russian Central Executive Committee on 6 September 1918) in its entirety and as to each of its articles is declared no longer in force. All obligations included in the Brest-Litovsk treaty concerning the payment of reparations or the transfer of territory and provinces are declared null and void.

The final act of Wilhelm's government, which needed this forced peace for the purpose of weakening and deteriorating bit by bit the position of the Russian Socialist Federated Soviet Republic and by no means for the purpose of limiting the exploitation of the peoples encircling the Republic, was the expulsion of the Soviet Ambassador from Berlin for his activity directed toward the subversion of the bourgeois-imperial regime in Germany. The first act of the workers and soldiers in Germany, who had thrown out the imperial regime, was to send for the Embassy of the Soviet Republic.

The Brest-Litovsk treaty of force and robbery has thus fallen under the united blow of the German and Russian proletarian-revolutionaries. ----

/XXI. EXTINCTION

XXI. EXTINCTION OF A PARTY

The text-book referred to previously (Institut Prava, op. cit., p. 407) states the following with regard to the termination of a treaty because of the extinction of a party (in translation):

The annulling of a treaty by one party in the event of the political death of the state which is the other party, i.e., of the termination for any reason of its existence as a participant in international legal intercourse, is also lawful.

The annulling of international treaties may also occur when a state is dismembered, if it is accompanied by the termination of the state as a subject of international law, except for treaties of localized importance, i.e., those which concern directly the territory of a state which has vanished -- as a whole or only in part. This event, of course, does not lead to the annulling of general treaties, if the state which is created as a result of the dismemberment accepts for itself all obligations under such treaties.

An example of application of the principle is afforded in the note delivered by Foreign Commissar V. M. Molotov to the Polish Ambassador on 17 September 1939, in which it was stated as follows, in translation (Pravda, No. 259 (7944), 18 September 1939, p. 1):

Mr. Ambassador,

The Polish-German war has made apparent the internal insolvency of the Polish state. During ten days of military operations Poland has lost all of its industrial regions, and its cultural centers. Warsaw, no longer exists as the capital of Poland. The Polish government has fallen and shows no signs of life. This means that the Polish state and its government have ceased in fact to exist. Likewise the treaties concluded by the U.S.S.R. and Poland have lost force. Poland, left to itself and without leadership has been turned into a convenient field for any eventuality and sudden occurrence, which could create a threat for the U.S.S.R. Therefore, having been neutral up to now, the Soviet Government cannot longer be neutral to these facts.

The Soviet Government cannot also be indifferent to the fact that Ukrainians and Byelorussians of the same blood who have lived on Polish territory, and who are thrown on the mercy of fate, have been left without protectors.

In view of this state of affairs the Soviet Government has given the order to the High Command of the Red Army to command the troops to cross the border and take under their protection the lives and property of the population of Western Ukraine and Western Byelorussia.

At the same time the Soviet Government intends to take all measures to help the Polish people out of the ill-fated war into which it was led by unwise leaders and to give it the opportunity to live a peaceful life.

/Accept,

Accept, Mr. Ambassador, assurance of my highest personal esteem.

People's Commissar for Foreign Affairs
of the U.S.S.R. V. Molotov.
Ambassador of Poland, Mr. Grzybowski
Polish Embassy
Moscow.

XXII. DENUNCIATION

The text-book referred to previously (Institut Prava, op. cit., p. 405) states the following in translation:

Denunciation. One of the ways of terminating a treaty is denunciation. Denunciation is a declaration by one state to the other in accordance with a prior agreement of the parties concerning the termination of an international treaty which has been in force between them.

The right of denunciation, as has been said above, is usually provided for in the text of the treaty itself. This right is generally conditioned upon three eventualities:

- 1) A preliminary mutual agreement of the parties on the possibility of denunciation in the future.
- 2) The compulsory notification of a party of its desire to denounce the treaty.
- 3) A more or less precise fixing of the period in which the notice of denunciation shall be sent. ----

Many Soviet treaties contain such provisions for denunciation. An example is the "Convention on the Method of Investigating and Resolving Frontier Incidents and Disputes between the Union of Soviet Socialist Republics and the Turkish Republic", signed in Moscow on 15 July 1937 (Vedomosti Verkhovnogo Soveta S.S.S.R., No. 33 (56), 29 September 1939, p. 1). The pertinent article reads as follows (in translation):

Art. 28. The present Convention shall remain in force for five years.

If one of the High Contracting Parties does not give notice six months before the expiration of the term of the present convention of its desire to renounce it or to amend it, the present convention shall be extended on the same terms by silent agreement for another five year term.

An example of Soviet practice is to be found in the following announcement (Collection of Laws, U.S.S.R., 1937, Part II, No. 35, Art. 297):

297. From the People's Commissariat for Foreign Affairs.

The Plenipotentiary of the U.S.S.R. in Iran, by a note dated 24 June 1937, advised the Ministry of Foreign Affairs of Iran of the denunciation by the U.S.S.R. of the Convention on Border Crossings of Inhabitants of Border Localities, concluded by the U.S.S.R. and Iran on 31 May 1928.

In accordance with the foregoing and in accordance with Article 15 of the said Convention, the Convention will terminate on 24 June 1938.

Vice People's Commissar for Foreign Affairs.
Potemkin.

Soviet procedure for denunciation of a treaty is established by the Law of 20 August 1938 relating to ratification and denunciation of treaties, the text of which has been quoted above in the discussion of ratification. Under its provisions denunciation is the function of the Presidium of the Supreme Soviet of the U.S.S.R.

/XXIII. EFFECT

XXIII. EFFECT OF WAR

Soviet views and state practice concerning the effect of war upon treaties have been set forth in considerable detail by Professor V. N. Durdenevskii in an article entitled "Pre-war Treaties After the War" (Sovetskoe Gosudarstvo i Pravo, No. 1, 1947, pp. 30-42). In his summary paragraphs he states the following (in translation from pages 41-42):

In summarizing what has been set forth, it is possible to state:

1) In feudal and semi-feudal conditions all pre-war international treaties were abrogated /rastorgaleni', by a war and specifically reinstated in the peace treaty or by special agreement thereafter (the so-called doctrine of military "diffidatsia")

2) In bourgeois international law, alongside the doctrine of "diffidatsia," which was for a very long time applied in practice, has come forth the theory of suspension of an international treaty by war, which school of thought accords with the needs of the bourgeois world market for a certain precision in relations.

3) In the epoch of imperialism, with the struggle to divide and redive the world, a tendency has been observed to recognize bilateral treaties as annulled by a war and to suspend as between the belligerents pre-war multilateral treaties. This tendency was noted as early as the treaties concluding the first world war.

4) At the present time, with the struggle for international peace and for the stability of international law, the durable character of multilateral treaties is not subject to doubt - they are suspended only between the belligerents to the extent of and in accordance with practical unavoidability. The Conventions on the laws and customs of war, on aid to the sick and wounded in the field are not suspended. Moreover, in existing law it is possible to point out examples of multilateral treaties in which it is said directly that they shall remain in force both in peacetime and wartime (the Convention of 1864 on the lighthouse of Cape Sparte and the Convention of 1885 on freedom of navigation on the Congo).

As regards bilateral treaties the practice reviewed above permits the statement that as a general rule they are abrogated by a war, but exceptions are recognized:

a) treaties anticipating war (for example the treaty between Chile and Argentina concerning the neutralization of the Straits of Magellan);

b) treaties concerning the boundaries of a state or the cession of territory (so-called transitory), which are considered as remaining in force until reviewed or until the complete disappearance of a party from the international scene;

c) other treaties in which it is specifically provided that they shall remain in force even during a war or for which such existence

/is a presumption

is a presumption as the result of firmly established custom (agreements on the privileges of diplomatic agents, and on the struggle with slavery).

As regards bilateral treaties, which fall under none of the given categories, it is desirable that on the conclusion of peace there be a specific statement on their reinstatement or the presentation to the parties of the opportunity during a definite period to fit them to the new conditions.

It goes without saying that with the recognition that aggressive war is outside the law, the ancient and complicated question which has been reviewed here has lost its former importance.

Professor Durdenevskii cites the following examples of practice from which he has drawn his conclusions:

(a) The peace treaties of 1920-1921 between the Soviet Government and the Baltic Republics and Poland contained no provision for the reinstatement of pre-war treaties as there were no pre-war treaties between the Soviet Republics and the Baltic States and Poland, and Latvia and Estonia had no desire to restore the Tsarist treaties.

(b) The pre-war treaties with Germany were reinstated by the Treaty of Brest-Litovsk of 3 March 1918 at Germany's demand, but the subsequent denunciation of the treaty by the Soviet Government (referred to above) set aside the attempted reinstatement. The Treaty of Rapallo of 16 April 1922 made no attempt at reinstatement.

(c) The Kars Treaty with Turkey concluded on 13 October 1921 had a specific provision, reading as follows, in translation:

Art. 1. The Government of the Great National Assembly of Turkey and the Governments of the Socialist Soviet Republics of Armenia, Azerbaijan and Georgia consider abrogated and without force treaties, concluded between the states formerly exercising their sovereign rights on territory which has now passed into the territory of the Contracting Parties, and relating to the aforementioned territory, as well as treaties concluded with third powers concerning the Transcaucasian Republics.

It is agreed that the present article does not apply to the Turkish-Russian Treaty concluded in Moscow on 16 March 1921.

(Collection of Treaties, etc., U.S.S.R., Vol. I-II, Moscow, 1935, Item No. 33, p. 166).

(d) The "Convention Embodying the Basic Rules of the Relations Between the U.S.S.R. and Japan," signed in Peking on 20 January 1925 (Collection of Treaties, etc., U.S.S.R., Vol. VIII, Moscow, 1932, Item No. 130, p. 7;

/American Journal

American Journal of International Law, Vol. 19 (1925), Supplement, p. 78 and XXXIV:32 INTS) contains the following pertinent paragraph (in translation):

Art. II. The Union of Soviet Socialist Republics agrees that the Treaty concluded at Portsmouth on 5 September 1905 remains in full force.

It is stipulated that the treaties, conventions and agreements, except for the said Portsmouth Treaty, which were concluded between Japan and Russia before 7 November 1917 shall be reviewed at a conference which shall take place later on between the governments of the Contracting Parties and that they will be amended or abrogated as the changed circumstances require.
