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SOVIET ATTITUDE TOWARD PACIFIC SETTLEMENT OF DISPUTES

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Ever since the October Revolution and the successful overthrow of the Kerensky government in Russia, the Communists in that country have characterized themselves as "champions of international peace." In support of this contention they have called upon the world to view the array of peace notes, appeals and declarations, records of conferences on inter-war problems and disarmament, treaties and pacts of neutrality and non-aggression which the Soviet government has either supported or entered into over the years. The purpose of this paper is to review the record of Soviet diplomacy, in order to throw some light on the USSR'S attitude toward the international settlement of disputes.

The Soviet Union has repeatedly stated and shown in practice a preference for bilateral talks as a means of settling disputes. This has been exemplified in many conciliation treaties. During the years that the USSR was weak and afraid of being crushed, it sought security through negotiation (1920-21), international conferences (1922-25), political agreements (1925-31), connection with the Frenoh alliance system (1932), the League of Nations (1934-39), and Hitler (1939-41).

On the other hand, there are only a few examples of acceptance by the Russians of mediation offers from other countries. The Allied Powers invited the Bolsheviks to Prinkipo in January, 1919, for a conference that would conclude the civil war then raging in Russia. The Soviets immediately accepted by radiogram. (8:294) This meeting failed to bring about peace.

A second attempt was made in March, 1919, when William Bullitt unofficially represented the United States on a trip to Moscow for the purpose of determining the possibility of acceptable terms to both the Soviets and their enemies. The former signed a draft treaty, thus showing their willingness to conclude peace with the anti-Bolshevik

forces. (8 : 294) The agreement never went into effect.

A third example under this same category was the Soviet acceptance of a 1926 French offer to mediate a dispute with Switzerland. The trouble arose from the assassination of a Bolshevik diplomat. The Russians agreed to remove their boycott of Switzerland, providing that the latter met certain conditions.

The USSR has not accepted any other offers of mediation.

Another method of settling international disputes involves commissions of inquiry. A definite procedure for this was established at the Hague Conferences of 1899 and 1907. The soviets have never resorted to such fact-finding commissions. The reason for this negative attitude was explained by Maxim Litvinov in a 1922 speech to a conference at the Hague.

> Commander Hilton Young has asked whether it is impossible to find an impartial judge in the whole world. It must be established first that there exist not one but two worlds: The Soviet and the non-Soviet. . . . . One party (to a dispute) will propose a Communist judge, like the chairman of the Third International; the other party perhaps the head of the League of Nations . . . Maybe only an angel could solve the Russian problem. . . . (4:43)

Even USSR satellites have been candid in their criticism regarding international commissions of inquiry.[1] Neither the Soviet Union nor its Balkan satellites (Yugoslavia, Albania, Bulgaria) permitted United Nations commissions to enter territories under their control during the civil war in Greece. A similar refusal met the later attempt by U.N. representatives when they attempted to perform their legal duties in North Korea to bring about free elections.

The Russians prefer diplomatic action or even commissions of conciliation to the quasi-judicial process of arbitration. They welcome arbitration only for commercial disputes on questions involving the conflict of laws, i.e., private international law. (1:111)

Again the reason for this attitude has been made quite clear by Soviet writers:

> The necessary minimum and basic premise for any arbitration is a community of mind on legal principles. Insofar as such a community is lacking, any attempt to secure an impartial authority for two parts of humanity that speak such different languages is *a priori* hopeless. (4:47)

In other words, there are no impartial states when a question involves differing economic systems according to the Communists. The ides of compulsory arbitration by third parties, therefore, has always been opposed by the USSR. The following exceptions only tend to substantiate this rule.

In a treaty signed by the Soviets with the proletarian government of Finland on 1 March 1918, compulsory arbitration was among the provisions. Both parties to the agreement were, however, workers' states. Also, the arbitrator was to be selected from the proletarian party of Sweden.

In December 1922, the Russians accepted the principle of international arbitration for political disputes with non-Socialist states, under the condition that a simultaneous agreement for disarmament be signed. (3:121) It was probably known to the USSR in advance, however, that the capitalist states would not accept the latter stipulation.

Most of the treaties of conciliation, signed by the USSR between the two World Wars, contain provisions for mixed commissions. All Russian treaties of this type are restricted by the provision that if agreement is not reached through conciliation, then no further obligation rests on the parties. The conciliation commissions have equal representation from both sides and are without a neutral chairman.

Soviet conventions for conciliation procedure usually contain a provision for submitting all disputes -- regardless of nature -- between the two parties, which cannot be settled through regular diplomatic channels within a reasonable length of time. Some of these treaties contain explicit reservations. One is found in the convention with Poland, which precludes the applicability of con-

ciliation to disputes concerning territorial questions.

Some Soviet treaties provide that precedence be given to special procedures established by previous agreements binding upon the parties. If such special procedures are provided for in these other agreements, the disputes falling under their provisions are not approached in accordance with the convention for conciliation procedure, but, instead, are handled in conformity with the provisions of the special agreement.[2/]

Many of the treaties signed by the USSR provided for the appointment of different commissioners for each session of the commission, despite the fact that the commissions established by these treaties meet periodically. They are, in a sense, more permanent than the so-called "permanent" commissions constituted by other treaties, which seldom if ever convene.

Each of the countries appoints two persons from among its own nationals. The sessions are presided over by one of the nationals of the party in whose territory the commission is sitting. Meetings are held alternately in the capitals of the two states. A session usually lasts fourteen or fifteen days and is held toward the middle of each year.

Under the system of annual sessions, no applications are necessary, except when one of the countries demands an extraordinary session. In that case, the party requesting the meeting must inform the other party of the "urgent circumstances" occasioning the request. With regard to ordinary meetings, each state shall "communicate to the other, through the diplomatic channel, the list of questions which it is desired should be dealt with at the session" (identical in all treaties).

Often experts appointed by the parties are allowed to sit with the commission as advisors. The conciliation commission usually decides the procedure of its meetings. Any person is heard, whose evidence is deemed to be useful. The countries are obligated to furnish the commission with all data and assistance found to be necessary.

All members must be present for the proceedings. Most treaties require a unanimous decision. The commission submits a joint report on all disputes referred to it as well as a consolidated settle-

ment proposal on the basis of interpretations that must be sound at law. (9:14) It usually recommends that its proposals be accepted by the two parties through diplomatic channels. The High Contracting Parties are bound to inform each other within ninety days as to whether they accept the proposals.

There have been some examples of mixed commissions established for a specific purpose. One was set up to map the Soviet-Afghanistan boundary by a convention between the two states. (13:4) The Commission had three persons from each side and was empowered to decide the ownership of islands. Its report was subject to approval by the two High Contracting Parties. A similar mixed border commission was provided for the following year in an agreement between the Soviet Union and Finland. (14)

Somewhat different from the preceding discussion is the matter of commercial arbitration, which arises from disputes between non-Communist individuals or corporations on the one hand and Soviet state trading corporations on the other. As such, it concerns only one state directly -- the USSR.

The Foreign Trade Arbitration Commission in the All-Union Chamber of Commerce was established in Moscow by a decree of 17 June 1932. (2:10) Soviet agencies transacting business in the United States, for example, always include a clause in their contracts with American corporations which provides that arbitration will take place only before this Soviet Commission in Moscow. All decisions are final and binding.

A post-war trade agreement with Poland contains a similar provision. Article XI of this agreement, which was signed on 2 February 1946, by the Minister of Navigation and Foreign Trade of Poland and the Foreign Trade Board of the Soviet Military Administration in Germany reads as follows:

> All disputes arising out of the present contract or in connection with it shall be subjected to the pronouncements of an arbitration commission attached to the All-Soviet Chamber of Commerce in Moscow whose decision is final and obligatory for both parties.(6)

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The most famous case of commercial arbitration was perhaps that between the Lena Goldfields Company, Ltd. and the USSR. The type of arbitration agreed upon here was different from the foregoing illustrations. The Soviets bound themselves in a contract to have a three-man arbitral commission, consisting of a national from each side and a neutral umpire.3/ The USSR eventually withdrew its Commissioner, Dr. Chlenov, and never paid the 13,000,000 pounds Sterling which was later adjudicated as damages.

It would seem that experiences of this type have proven to the Russians that they cannot rely on any third party to see matters from their point of view. Therefore, the Communists now keep to their own Foreign Trade Arbitration Commission, where they are certain that the verdict will always be made in accordance with their wishes.

FOOTNOTES

1/ "You observe that nowadays Commissions are perfected instruments for painting given situations in the colors desired by their masters. Our (United Nations) Commissions reflect the majority that has been formed here. They do the work which the masters of that majority give them to do, and I think that this provides a further extension of the parallel between Greece and Korea. The Commission which you dispatch will have a majority that will be a reflection of the majority in the Assembly." Speech by Bebler (Yugoslavia) in "Consideration of Dispatch of a Commission to Korea by the General Assembly." (11:111)

2/ "The procedure laid down in the Polish-Soviet Agreement of August 3, 1925, for settlement of frontier disputes shall remain in force. Should they not have been settled amicably by means laid down in the above-mentioned agreement, /i. e. through direct bilateral negotiations/ either Contracting Party may refer them to the Conciliation Commission provided for in the present article." USSR-Poland, 23 November, 1932. (5)

3/ The three men were Sir Leslie Scott, Dr. S. B. Chlenov, and umpire Professor Otto Stutzer.(7)

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