

COMMENT

KAZIMIERZ GRZYBOWSKI*

It is not generally remembered that the first country to reject the Law of the Sea Convention was the Soviet Union. On April 18, 1982, the Soviet Government announced that it had enacted the Decree authorizing deep seabed prospecting to develop mineral resources beyond the limits of the continental shelf and staking out claims for actual mining activities. At the same time the Government declared its dissatisfaction with the proposed regulations of the Convention in this particular area of its provisions.

As the present session centers on the provisions for dispute settlement in the Convention, all those familiar with Soviet policies must be convinced that the provisions of the Convention's dispute settling scheme were also unacceptable to the Soviet Union. Indeed, instances of Soviet acceptance of compulsory jurisdiction for arbitral or judicial settlement of disputes are very rare. They all, except one, date to the pre-World War II period. After the War there was only one instance of Soviet submission to a compulsory conciliation procedure—that established by the Danube Convention of 1948. At that time only socialist countries were parties to the Convention, and here the Soviet Union could be sure to prevail in a dispute arising between the parties. It must be noted that there is not a single instance in which the parties to the Danube Convention resorted to that procedure.¹

The basic Soviet Union attitude to international adjudication was expressed for the first time at the Hague Economic Conference (1922), which considered Soviet reintegration into the world economy. Maxim Litvinov, speaking for the Russian delegation, declared that it was impossible to accept a proposal for the arbitration of disputes involving the ownership of certain enterprises in Russia. "Only an angel," he said, "would be capable of the necessary impartiality." It was necessary to face the fact that there was not one world, but two: a Soviet world and a non-Soviet world. Since there was no third world to arbitrate, he anticipated difficulties. One party would put forward a communist judge, while the other perhaps would propose the Chairman of the League of Nations. None of the suggestions which had been made so far was acceptable.²

Accordingly, formal submission of disputes to adjudication was avoided. Some of the early Soviet agreements with other countries made to liquidate some of the problems created by World War I provided for good offices and mediation by individuals or international organizations (such as the Red Cross) (repatriation of prisoners of war, return of Soviet shipping which sought refuge in foreign ports,

etc.). An interesting form of mediation was provided for in the Soviet-German Agreement regarding Soviet ships in Germany. Disputes were to be settled by a commission consisting of two members appointed by each party. Should the commission be unable to agree on a decision, it was authorized to appoint a neutral mediator. Similar arrangements were made as regards deals of the early Soviet trading organization.³

The only examples of Soviet acceptance of compulsory adjudication were the Convention for Limiting the Manufacture and Distribution of Dangerous Drugs (July 13, 1931) and the International Opium Convention (1925).

In 1935 the Soviet Union was involved in a dispute with the government of Uruguay which asserted that the Soviet diplomatic mission fomented unrest and a communist revolt in Brazil. The Soviet Union declared itself ready to accept arbitration.⁴

In the post World War II period Soviet policy became even more rigid. Third party adjudication was rejected for ideological reasons. Compulsory adjudication of international disputes was considered not in tune with the conditions of the modern international community. Soviet members of the International Law Commission, while emphasizing the prohibition of the use of force in international relations, thought that compulsory jurisdiction had no place in a community of free and sovereign states. Sovereignty and independence were a necessity, resulting from the destruction of capitalist empires, and compulsory jurisdiction would in effect continue imperialist domination of great powers. Professor Kozhevnikov was convinced that compulsory jurisdiction "presupposed the existence of a supranational authority. The very foundation of existing international law, as an expression of the will of sovereign states, would thus be called into question."⁵

Professor Tunkin, at present the leading authority in Soviet international jurisprudence, believed strongly that at that stage compulsory jurisdiction would harm the development of international law. He supported his view even as regards disputes involving the denunciation of treaties. Among many treaties in force, there were a number which were a heritage of the colonial system, or had recently been imposed by the colonial powers on new states. As the new states matured and as formal independence was transformed into real independence, the social forces working for peace were bound to rebel against certain treaties concluded earlier. Where subservient governments had given way to strong ones, the effect of article 25 (draft Convention on Arbitration) would be to place obstacles in the path of states when they thought to free themselves from onerous and unjust treaties.⁶

Professor Krylov, another eminent representative of the Soviet science of international law and judge of the International Court of Justice, thus states the Soviet case: "Arbitration has played a great and honorable role in the history of interna-

3. 6 SOVIET DOCUMENTS OF FOREIGN POLICY 266.

4. *Id.* at 156-57.

5. 1953 INTERNATIONAL LAW COMMISSION REPORTS 43.

6. 1963 *id.* at 58, 170.

tional relations, but compulsory arbitration was fast disappearing and was now to all intents and purposes accepted only by a small number of states.⁷⁷

The only area where the Soviet Union was willing to consider submission of its disputes to an impartial body were disputes regarding the validity and fulfillment of international contracts. In a number of navigation treaties the Soviet Union has agreed to submit its ships in foreign ports to the jurisdiction of local courts. In the abortive US-USSR trade agreement of 1972 the Soviet Union agreed to compulsory commercial arbitration as agreed by the participants of a trade contract, accepting also submissions of disputes to commercial arbitration organized in the third countries.

Two other examples of Soviet attitudes to dispute settlements in recent agreements are the provisions on dispute settlement contained in agreements with the United States and Norway. The U.S. Agreement on Consideration of Conflicts Resulting from Damage to Fishing Vessels or Gear and Measures to Prevent Fishing Conflicts provided for the creation of two Dispute Settling Boards consisting of four members, two from each party. Unanimous decisions of the Board are binding. In case of disagreement, the Board makes a report in which views of each member are expressed. The dispute is then settled by negotiation.⁸

Another example of limited Soviet support of institutional and compulsory dispute settlement is the International Maritime Satellite Organization (INMARSAT), which was set up by two agreements. The main INMARSAT Convention provided for its organization, purpose, governing bodies, and administration. The other was a detailed operational agreement, which may be signed not only by states, but also by the participating organizations which were to provide the meteorological service for the ships. The Soviet Union is represented on the operational level by an organization which is similar to our Comsat. Disputes arising on the level of the constitutional convention are subject to facultative arbitration, in which parties must agree to submit their disputes to an arbitral tribunal. Disputes on the operative level, arising between the service organizations, are subject to compulsory adjudication on the model of commercial arbitration. Also disputes arising between the signatories arising under separate agreements (unless otherwise provided) are subject to compulsory jurisdiction.⁹

The present pattern of Soviet acceptance of compulsory dispute settling is thus clear. The Soviet government may be brought before an international arbitral tribunal or international court only upon its agreement in each separate case. It has yet to happen. Somehow strong Soviet disapproval of compulsory jurisdiction has escaped attention (even among the LOS Conference participants). In 1978 the

7. 1956 *id.* at 97.

8. Fisheries: Consideration of Claims Resulting from Damage to Fishing Vessels on Gear and Measures to Prevent Fishing Conflicts, Feb. 21, 1973, United States-U.S.S.R., art. 1, 24 U.S.T. 663, 670-71, T.I.A.S. No. 7575; *id.*, June 21, 1978, annex 2, 24 U.S.T. 1588, T.I.A.S. No. 7663; Fisheries: Certain Fisheries Problems on the High Seas in the Western Areas of the Middle Atlantic Ocean, Feb. 26, 1975, United States-U.S.S.R., 26 U.S.T. 138, T.I.A.S. No. 8021.

9. International Maritime Satellite Organization (INMARSAT), *done* at London Sept. 3, 1976, 31 U.S.T. 1, T.I.A.S. No. 9605. Cf. A.L. Kolodkin, Ju. M. Kolosov, SSSR I mezhdunarodnaia organizatsia morskoi sputnikovoi sviazi (INMARSAT), *Sovetskoe Gosudarstvo i Pravo* 1977, No. 8, at 101.

Soviet press carried a strongly worded statement of the Soviet delegation regarding the compulsory conciliation in the Convention of UNCLOS III. It was also disregarded.