

LEGAL ASPECTS OF THE FORMS
OF INTERNATIONAL CO-OPERATION BETWEEN
THE SOVIET UNION AND AFRICAN STATES

BY

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LIST OF ABBREVIATIONS

A.J.I.L.	American Journal of International Law.
A.S.I.L.	American Society of International Law.
A.R.B.(E.F.T.)	African Research Bulletin - Economic, Financial and Technical Series.
A.R.B.(P.S.&C.)	African Research Bulletin - Political, Social and Cultural Series.
B.Y.I.L.	The British Yearbook of International Law.
E.C.A.	Economic Commission for Africa.
E.C.O.S.O.C.	Economic and Social Council of the United Nations.
F.A.O.	Food and Agriculture Organization.
G.A.	United Nations General Assembly.
G.A.O.R.	United Nations General Assembly Official Records.
G.A.T.T.	General Agreements on Tariffs and Trade.
H.R.	Académie de droit international: Recueil des Cours.
I.C.J.	International Court of Justice.
I.C.J. Rep.	International Court of Justice, Reports, of Judgments, Advisory Opinions and Orders.
I.C.L.Q.	The International and Comparative Law Quarterly of the United Kingdom.
I.L.C.	International Law Commission of the United Nations.
I.L.C.Y.B.	International Law Commission Yearbook.
I.L.O.	International Labour Organisation.
I.M.F.	International Monetary Fund.
J.W.T.L.	Journal of World Trade Law.

L.N.O.J.	League of Nations Official Journal.
M.F.N.	Most Favoured Nation.
O.A.U.	Organisation of African Unity.
O.O.N.	Organizatsii Objedinonnikh Natsii (United Nations Organisation).
P.A.S.I.L.	Proceedings of American Society of International Law.
P.C.I.J.	Permanent Court of International Justice.
S.C.	Security Council.
S.C.O.R.	Security Council Official Records.
S.D.D.	Ministerstvo Inastrannykh Del, Sbornik deistvuyushikh dagavorov, soglashenii i konventsii zakluchennykh SSSR s inostranymi gosudarstvami. (Ministry of Foreign Affairs, Collection of Treaties, Agreements and Conventions in Force concluded by the U.S.S.R. with Foreign Countries).
S.G.I.P.	Sovietskoe Gosudarstvo i Pravo (Soviet State and Law).
U.N.	United Nations
U.N.Doc.	United Nations Documents
UNCTAD	United Nations Conference on Trade and Development.
UNESCO	United Nations Educational, Scientific and Cultural Organisation.
U.N.T.S.	United Nations Treaty Series.
U.S.Y.B.	Unesco Statistical Yearbook.
W.H.A.	World Health Assembly.
W.H.S.R.	World Health Statistical Reports.

INTRODUCTION

I developed my interests in this work during my five-year studies in the Faculty of Law of the Friendship University, Moscow.

As an African, the interests are natural, but perhaps, also more prompted by the disappointment in the fact that after over a decade of rapidly growing international co-operation between the Soviet Union and the African States, the abundant legal materials, practices and evidences of this co-operation have not been compiled in a single text. They are all scattered throughout monographs, documents and the like.

The attempts made here are directed towards a compilation of the legal aspects of this co-operation, exposing their specific characteristics.

The term 'co-operation' as used in the title, which expresses the ties between the Soviet Union and the African States, is appropriately chosen if only because it denotes juridical equality and mutual sovereignty without the condescension of 'aid' - a term which in turn expresses ties between weak and strong states. Thus the agreements in a number of different spheres - economic, political, educational, cultural, diplomatic - examined in this work are collectively known as Co-operation Agreements.

The thesis is divided into six chapters. Chapter 1 starts with attempts to restate the legal significance of General Assembly resolutions, since the principles of co-operation discussed in this chapter, and which form the basis on which co-operation between the Soviet Union and the African States are regulated, are products of General Assembly resolutions and declarations. It then discusses the controversial 'new principles' which the Soviets claim are specifically applied in relations with the new states.

Chapter II deals with practice and forms of diplomatic relations between the two sides, exposing specific practices in this relationship.

Legal forms of co-operation are not restricted to bilateral relations, and Chapter III thus examines joint co-operation at the United Nations. Chapter IV deals with various agreements regulating aid, trade and other forms of economic relations. Also, such Soviet economic institutions as the State Monopoly of Foreign Trade. The Soviet Trade Representatives as related to the African States are also critically examined.

Chapter V examines the various agreements in the fields of cultural co-operation such as Education, Health, Joint Research and so forth.

The last chapter examines the effect of the attitudes and contributions of Soviet-African co-operation on international law, discussing such institutions as sources of law, recognition and the reception of traditional international law.

CHAPTER ONE

LEGAL PRINCIPLES OF CO-OPERATION

I. UNIVERSALITY AND THE PRINCIPLES OF INTERNATIONAL LAW

In the effort to examine the legal principles regulating co-operation between the Soviet Union and African States, we are faced with the dilemma of which standard principles to apply.¹ This situation is brought about by the fact that we are living in a divided world - a world of nations

"divided by a high wall - a conflict of fundamental convictions concerning man, state, law and community ... As long as the antagonism in fundamental convictions continues to divide the world, the road to an international legal order for a world as a whole² lies barred and we have to live in a political order."³

According to Professor Kurt Wilk,

"If after the nineteenth century, there remained any question concerning the universality of international law, or of its fundamental rules, it appeared to be largely one of legal history. But as the world of the twentieth century has come to be divided by political ideologies, their legal ramifications have given the question new actuality as one of basic legal theory."³

Traditional international law, which is Western International Law because of its origin, is currently undergoing rigorous changes in accordance with the current trend of development. Along with the changes appear several concepts expressing

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1. On Principles of International Law, see - Professor Ian Brownlie - Principles of Public International Law (Oxford 1966); Hans Kelsen, Principles of International Law, (London, 1966).
 2. F.M. van Asbeck, "Growth and Movement of International Law" as in The International and Comparative Law Quarterly, Vol. II, 1962, p. 1071.
 3. Kurt Wilk, International Law and Global Ideological Conflict, Reflection on the Universality of International Law. A.J.I.L. 45 (1951) p. 648.

different schools of thought. Thus, while we witness a global expansion of international law, we are confronted with new challenges to its unity as a single, universally valid legal system.

The present problem confronting international law was summed up by Professor Wright in these words.

"Today public opinion on both sides of the 'Iron Curtain' tends to become an ideology, whether of democracy or of communism; and international law tends to split into opposing ideologies of Western and Soviet international law."⁴

There is for example the current legal debate over the arrival of Soviet International Law. Professor John Hazard submits that Soviet international law is more than emerging.

"It is here"⁵ he asserts. This submission was rejected by Professor William Butler who warned that

"...much as we would deplore any doctrinal or legal developments which would impair the integrity of general international law, we ought to refrain from announcing the arrival of Socialist international law prematurely when its appearance qua law appears to be controversial."⁶

Dr. Chris Osakwe a former pupil of Professor Tunkin joining in the debate, noted that

"If in the recent past the new international law was still in a state of formation, it has now, particularly after the Czechoslovak events of 1968, finally evolved into a recognizable body of law even though it is still going through an inevitable process of perfecting and modernising itself."⁷

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4. Q. Wright, International Law and Ideologies. A.J.I.L. 48 (1954) p. 617.
 5. Renewed Emphasis upon a Socialist International Law, A.J.I.L. 65 (1971) p. 144.
 6. "Socialist International Law" or Socialist Principles of International Law, *ibid*, p. 800
 7. Socialist International Law Revisited. A.J.I.L. 66 (1972) p. 600.

In our opinion, Professor Butler is correct to reject the premature announcement of the arrival of Socialist international law. In the first place, Soviet legal scholars are still divided over the topic. In an article not long ago, a Soviet scholar Dr. Kolosov reaffirmed that the Socialist principles of international law do not form a separate, independent Socialist international law, and that they only constitute the most democratic and progressive element, of modern international law.⁸

Secondly, it is presumed that it is not in the interest of the achievement of the universality of international law to encourage various concepts since such attitude can only deter the progressive development of international law rather than help develop it, more so when these concepts are only repetitions of earlier concepts. Of course this conclusion does in no way contradict the establishment of a regional international law which was indeed recognised by the International Court of Justice as for example in the Asylum Case.

II. POSITIVE AND NEGATIVE FUNCTIONS OF PRINCIPLES OF INTERNATIONAL LAW

Since the world has come to be divided by political ideologies political doctrines can not but reflect on international law and its principles. The United Nations and

8. International Law and Co-operation. International Affairs. (November, 1972) p. 54.

consequently international law can never be anything but a mirror of the world as it is. Thus, if the world is a world of cold war, it will reflect on the United Nations and international law.

In such a situation as above, modern states tend to respect such principles of international law that agree with their interests and aspirations, and ignore those not favourable to them. Positive functions of legal principles are those which yield concrete results as a result of their application. Notably in bilateral co-operation, the scope and limits of application of these principles are mutually agreed by the partners in the form of rules, and often, the pre-knowledge of the gains and benefits that co-operation on such principles would bring gives the impetus to adhere bona-fide to them.

Take, for example, the field of economic co-operation. States co-operate with one another in this field to further promote economic development of their countries. The guiding principles of such co-operation are mutual advantage, reciprocities, good faith etc. If state "A" fails to fulfill obligations contained in a contract on the supply of certain goods, state "B" reserves the right to reciprocate and withhold fulfilment of its own obligations.

However, since there is mutual benefit in economic co-operation, the principles of international economic co-operation are usually observed. It was not a difficult task for example, to arrive at the principles of Space law, if only

because the powers involved in space exploration appreciate the mutual benefits to be gained from such a standard form of rules.

In explaining the negative functions of the principles of international law, we are referring to the common principles of international law which form the basis for international co-operation. These are the body of rules which provide outer boundaries for a start in international co-operation. They constitute the legal and moral criteria within which states can participate in the international arena. An important aspect of these body of rules is that states are inevitably obliged to apply these principles irrespective of differences in their socio-political and economic systems.

Even, absence of relations between states does not imply non-adherence to these principles. These are the principles of Sovereign Equality, Non-intervention, Self-determination,⁹ etc. as contained in the General Assembly Declaration on the Principles of International Law concerning friendly relations and co-operation among states.¹⁰

9. In its external context, the principle of self-determination contains certain positive elements in the sense that former colonies through the application of this principle are entitled to independence.

10. U.N. Resolution 2625 (XXV) 24 October 1970, hereafter referred to as the 'declaration of principles of co-operation'.

Because as stated, these non-productive principles of co-operation are the basis on which all forms of co-operation are established by all member states of the world community, our analysis of the legal principles of co-operation between the Soviet Union and the African States shall be based on the above General Assembly Declaration on Principles of Co-operation.¹¹

The countries with which this study is concerned - the Soviet Union and the African States - are members of the United Nations and were very active in achieving the declaration.¹² Moreover, in several documents of the Organization of African Unity, for instance Article 2(e) of its Charter, it is determined that International Co-operation shall be promoted with due regard to the Charter of the United Nations and its associated instruments.

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11. Discussing the characteristics of international law on the levels of partly or fully organised international society, Professor Schwarzenberger stated that international law may become
- (a) the law of power;
 - (b) the law of reciprocity;
 - (c) the law of co-ordination.

The first regulates power politics and relations between strong and weak states, and the law of power is in turn restricted by the law of reciprocity by which states find it beneficial to freely develop rules of international law on a footing of reciprocity. It adjusts "antagonistic interests on a basis of reciprocity". Lastly, the law of co-ordination excludes the defects of the former two and "serves as a means of co-ordinating individual efforts for the better achievement of common purposes."

A manual of International Law 5th ed. (London, 1967) pp.10-15.

12. The Special Committee set up on the strength of the UN resolutions 1966 (XVIII), 2103 (XX) and 2463 (XXIII) on the Principles of Friendly Co-operation comprised of eight African States and a powerful East European bloc led by the Soviet Union.

Likewise, the Soviet Union in numerous writings and statements claims, that its conduct is in accordance with the United Nations Charter and its principles.

It can therefore be concluded that the United Nations' principles of co-operation serve us best in assessing the legal contents of the principles involved during co-operation between the Soviet Union and the African States since, it is assumed, that having acknowledged these principles they should apply them in co-operation between themselves because by so doing they help to establish the principles in practice as well as in words.

However, we shall constantly allow for comments on certain developing principles which are exclusively associated with the Soviet Union - African co-operation.

III. LEGAL SIGNIFICANCE OF U.N. RESOLUTIONS AND DECLARATIONS

In the light of views sometimes expressed that declarations and resolutions of the General Assembly do not carry any legal weight and that they are but moral concepts, is it appropriate to apply the General Assembly Declaration on Principles of Co-operation as yardstick or legal means of evaluating the principles of co-operation relevant to our discussion? The legal significance of United Nations resolutions and declarations is still a controversial issue and like other institutions of international law, general consensus has yet to be reached on accepted concept.

Indeed, if properly examined, there are arguments on both sides of the coin.¹³ Those who deny any legal significance to General Assembly resolutions and declarations do so on many grounds among which are - The General Assembly resolutions and declarations are in accordance with the Charter of the United Nations, not obligatory but mere recommendations and therefore cannot be the source of legal rights and duties. Interestingly, even states who purport to grant legal significance to General Assembly declarations and resolutions find it convenient at times to make use of this argument. Thus, the Soviet Union in reply to demands by member states that it should fulfil its financial obligations in relation to the United Nations operations in the Congo, refused to on the ground that decisions of the General Assembly are not obligatory.

Furthermore, the opponents of legal significance of General Assembly resolutions and declarations claim that these resolutions are often not implemented and that if they constitute law, they would have been complied with. Lastly, the General Assembly as a political organ where states pursue national interests is presumed incapable of making any legal contribution void of political countertermination. In short, it is not a legislature.

13. For detailed studies on the topic, see - A.J.P. Tammes Decisions of international organs as a source of international law, as in Recueil des Cours (1958, II, Vol. 94) pp. 261-364; F.B. Sloan The binding force of a 'Recommendation' of the General Assembly of the United Nations, B.Y.I.L. XXV (1948) pp. 1-33; Rosalyn Higgins, The development of international law through the organs of the United Nations (Oxford, 1963), pp. 76-130; Obed Y. Asamoah, The legal significance of the Declarations of the General Assembly of the United Nations (The Hague, 1966); Jorge Castaneda, Legal effects of United Nations Resolutions (Columbia, 1969).

Judging from modern exponents of this topic, there is little doubt that the argument in favour of the legal importance of General Assembly resolutions and declarations outweigh those opposed. In our opinion, certain General Assembly resolutions and declarations are of legal significance.

In the first place, it should be noted that inability to formulate a universally accepted agreement on the legal status of a resolution is a reflection from the problems arising from same efforts in certain quarters in regard to the legal status of international law in its traditional and positive forms. Indeed, the opinion has been expressed which denies that international law can properly be considered more than international morality.¹⁴

As to the first argument which considers Assembly Declaration as mere recommendations, it is difficult to agree with this general sweeping statement if only because it is difficult to make single conclusions concerning the legal status or binding force of every resolution. According to Professor Castaneda,

"A resolution carries equally the meaning of an order, an invitation, or a variety of hybrid indeterminate forms. It may deal with political or technical matters ... it may be legislative in a material sense - that is, it may express legal norms ... From any angle, the concept of international resolutions is complex."¹⁵

14. F.B. Sloan, op. cit. p. 1.

15. op. cit. footnote 10, p. 2.

Also, the diversity of the functions of the General Assembly itself can as well be mentioned in its selection of operative words which vary from 'recommends' 'expresses the hope' to 'directs', 'instructs'.¹⁶

Numerous Articles of the United Nations Charter have indicated that the General Assembly can make binding decisions - for instance, in relation to the admission of members to the United Nations (Article 4(2)), establishment of subsidiary organs (Article 22), the appointment of the Secretary General (Article 97) and other related articles such as the approval and apportionment of expenses. Therefore, while it is accepted that the basic functions of the Assembly are recommendatory, there are exceptions to this conception as shown above.¹⁷ It should be noted that the legal value of General Assembly resolutions and declarations is not uniform. It depends not only on the organ that approves them and on their form, but also and especially on their content.

The second argument which states that since the General Assembly resolutions and declarations are largely not complied with, they are not law, has nothing to support this claim, for,

16. F.B. Sloan, op. cit. p. 3.

17. For instance, the General Assembly has legislative authority on the internal administration of the United Nations. Thus, it supervises and directs the work of the Secretary General, the Economic and Social Council, the trusteeship council, etc.

it will then be presumably right to say that international law is not law because of its frequent violations. States self-interests tend to be the cause for frequent violations of legal norms. As noted by Dr. Sukijasovic, with the exception of the diplomatic and consular fields, almost all the rules of public international law have been violated.¹⁸ This itself however does not indicate that international law is dead. As predicted by one African scholar -

"Given its present momentum, modern international law, especially as it is evolving in the practice of the United Nations, will by 1980 have become almost as adequate a system of law for international purposes as is the municipal law of a State for national purposes."¹⁹

While we share the optimism about the future efficacy of international law, we doubt the date target set above.

On the final argument that in as much as the General Assembly is a political organ and its work is heavily dominated by political considerations and thereby reduce to nil their legal significance; the view has been expressed that in any legal order, politics and law are not entirely separable, especially in the case of a decentralized international legal order such as the United Nations. Also the

18. A.J.I.L. 65 (1971), p. 378.

19. T.O. Elias. Africa and the development of international law. (Leiden, 1972), p. 87.

membership of the General Assembly it is further argued, consists of states which are the subjects and makers of international law.²⁰ According to Dr. Higgins, the resolutions of the General Assembly represent the collective acts of states, acts capable of creating customary international law which is developed in and out of international organizations.²¹

Taking the various arguments into consideration, it could be noted that the actual differences have not taken the form of flat opposition between a negative and an affirmative. From the arguments, it can be stated

- (a) that under appropriate conditions, principles laid down by the General Assembly may set in motion forces which ultimately have the effect of bringing law into existence.
- (b) it is incorrect to assert that General Assembly resolutions laying down general principles automatically create international law.

IV. LEGAL SIGNIFICANCE OF THE GENERAL ASSEMBLY DECLARATION ON PRINCIPLES OF FRIENDLY CO-OPERATION.

The declaration contains principles of international law which serve as valuable and sometimes irreplaceable means of

20. Asamoah, Op. Cit. pp. 7 - 10.

21. Op. Cit. Footnote 10, p.2.

determining in case of doubt, and of authoritatively verifying whether a legal norm exists in co-operation between states. It is not a perfect document as such since there are ambiguous statements in some parts of the declaration, but in the words of Professor Rosenstock

"...the generality of the language used in the declaration does not deprive this instrument of its significance as the most important single statement representing what the members of the United Nations agree to be the law of the Charter on these seven principles."²²

A significant aspect of the law-making effect of the General Assembly resolutions and declarations has been the citation of previous resolutions in later Assembly resolutions. Thus it is noted that

"important from a legal standpoint is the fact that a very few resolutions have been cited much more often than average."²³

But then, a resolution or declaration can only be cited on the acceptance that such resolution has formulated certain norms of rules as guidelines for the new resolution.

According to a research conducted by Professor Bleicher, Resolution 1514 (XV) was cited in 95 subsequent resolutions in the first six sessions following its passage and resolution 217 (III) was cited 75 times in its first nineteen years.²⁴

22. The Declaration of Principles of International Law Concerning Friendly Relations: A survey, A.J.I.L. 65 (1971) p. 714.

23. Professor Bleicher, The legal significance of Recitations of General Assembly Resolutions. Op. Cit. A.J.I.L. 63 (1968) p. 144.

24. Ibid.

The Declaration on Principles of Friendly Co-operation contain certain principles of law with the intent of fixing, clarifying and making precise the term and scope of their application. At the General Assembly, the Declaration has been referred to on several occasions, and also outside the United Nations, states have formed the habit of invoking the Declaration to condemn or appraise each other's act. We shall proceed to examine some of these principles.

V. PRINCIPLE OF SOVEREIGN EQUALITY.

States as the major participants in international relations recognise one another as equals. There are many ways of expressing this recognition, and one common way is in form of an agreement.

In a colonial situation for example, the principle can not apply if only because colonies, as objects of international law have no capacity to conclude agreements.²⁵

25. Of course, there are very few examples where colonies had been granted the capacity to enter into agreements with other entities on certain matters. The notable instances are the General Tea Agreement to which Ceylon was a party. Also, although Rhodesia's unilateral declaration of independence is still regarded as illegal, it also was a party to some international agreements. In 1907 Sir Wilfred Laurier, Prime Minister of Canada, expressed the desire of the Dominion to open negotiations for a new Commercial Treaty with the French Government. As a result of this request, two plenipotentiaries were appointed from Canada to conclude and sign the desired agreement along with the British Ambassador in Paris. (...continued on page 15.)

However, in the modern world, the very fact that it is agreement and not any other form of forcible action dictates co-operation is enough indication of the de jure recognition by states of one another as sovereign equals.

The principle itself can be traced back to the XV and XVI centuries when state sovereignty was considered as a symbol of the supreme authority of an absolute feudal monarch who was independent of other monarchs.

While the Soviet Union and the African States claim adherence to international law, they resent any attempt to submit their sovereign rights to any control.

The opening paragraph of the United Nations Declaration on the principles of sovereign equality of States states that all states enjoy sovereign equality which in turn compose of these elements:

25. (cont...)

The instructions sent by Sir Edward Grey, the Secretary of State for Foreign Affairs to the Charge d'Affaires at Paris concerning the procedures to be followed in Paris was seen as "a complete repudiation of the principles formulated by Rippon in 1895 and constitute a truly important landmark in the evolution of the treaty-making powers of the colonies."

R.B. Stewart, Treaty Relations of the British Commonwealth of Nations. (New York, 1939) pp. 67-68.

As early as 1876, the Postal Administration of India was admitted to membership in the Universal Postal Union by accession under Article 17 of the Berne Convention of October 9, 1874. The procedure for admission was exactly the same as for sovereign States.

Ibid. (p.117).

The above cases are just the very few exceptions to the above statement.

- (a) States are juridically equal;
- (b) Each state enjoys the rights inherent in full sovereignty;
- (c) Each state has the duty to respect the personality of other states;
- (d) The territorial integrity and political independence of states are inviolable;
- (e) Each state has the right freely to choose and develop its political, social, economic and cultural systems;
- (f) Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states.

The tests of the applicability of the enumerated elements in the co-operation between the Soviet Union and the African States is through their agreements and state practice.

VI. SOVEREIGN EQUALITY IN THE AGREEMENT AND STATE PRACTICE OF THE SOVIET UNION AND THE AFRICAN STATES.

An important characteristic of the agreements on co-operation between the Soviet Union and the African States is that they all include in their texts, the statement that such co-operation is based on sovereign equality. Sovereign equality is regarded as the keystone of their co-operation.

Article 1 of the Cultural Agreement between the Soviet Union and Uganda of 24 July 1965 stated that the Contracting Parties shall expand and strengthen cultural exchanges for

mutual benefit within the framework of the laws operating in each other's country on the basis of sovereign equality.²⁶ By the insertion of this principle in their agreement, both sides confirm its legal significance and affirm its violation as an illegal act.

The African States after several years of colonial bondage are sensitive against any act that amounts to the Soviet coined vocabulary 'neo-colonialism' which implies the continuation of colonial or any other external influence in the affairs of newly independent states. The Soviet Union having claimed to be the champion of the oppressed nations of the world need to correlate verbal pronouncements with concrete actions. It is therefore not a surprise that both sides insert the principle in their agreements, since agreement as a means of legal control is the most appropriate method of expressing the desire to submit co-operation to the rules of international law.

As an instrument of defending its internal and external policies, the principle has been expressed in a number of Soviet doctrines, and relevant to our discussion here, it has been expressed as a means of defence of the developing nations. They therefore maintain that:

26. United Nations Treaty Series, Vol. 596, p. 201; Also, Ibid. Vol. 493, p. 197; Vol. 457, p. 274; Vol. 672, p. 305.

"...the recognition and precise observance of all the rules constituting the content of the principle of sovereign equality is especially important for the developing countries which in varying degrees remain dependent on the capitalist states."²⁷

As a weapon in the international class struggle, sovereignty - in the form of sovereign rights of people to national liberation, revolutionary struggle and statehood, and non-interference with sovereign prerogatives after liberation - is a means of strengthening the socialist camp at the expense of the capitalist camp.²⁸

VII. DE IURE AND DE FACTO EQUALITY.

Equality of states should not be quoted outside its legal context. Sovereign equality of states basically implies juridical equality. It cannot be otherwise considering the fact that the entire African states combined cannot be stated as being equal to the Soviet Union either in terms of industrial or technological achievements. However, when we talk in terms of de iure equality of states, the vote of the Soviet Union at the United Nations General Assembly is equal to that of Lesotho - one of the smallest and poorest African States. This is juridical equality, and it is in this manner that states are equal, for in the words of Professor Sørensen, sovereignty is primarily a legal conception.

27. Professor D.I. Baratashvili. International Law Principles of Peaceful Co-existence. International Affairs, Vol. 13, 1972, p. 24; also, see International Law. Academy of Sciences (n/d), Moscow, p. 97.

28. Professor B.A. Ramundo. Peaceful Co-existence. (Baltimore, 1967), p. 87.

The concept of juridical equality of states is accepted by the Soviet Union and the African States, hence they can contract agreements between themselves. There are disagreements however on other aspects of the principle.

VIII. THE RIGHT OF VETO AND SOVEREIGN EQUALITY

Whereas the African States accept the juridical equality of states as such, they argue that certain institutions of the United Nations contradict the concept that all states are juridically equal. One of such institutions is that of the right of veto as enjoyed by the five permanent members of the Security Council namely - Britain, China, France, U.S.A., and U.S.S.R. The African States argue that in the present age when national self-interests come first before other things, it is appropriate that the African continent should be represented as a permanent member of the security council, and that the institution of veto grants the permanent members some degree of superiority over the others.

According to Soviet lawyers, the right of veto is no privilege, rather it is a duty arising out of the great responsibilities shouldered on the Security Council for the maintenance of international peace and security, and that the principle is a form of legal barrier against the aggressive plans of the imperialist states from using the UN to prepare for another war.²⁹

29. Professor V. Licovskii. Mezhdunarodnoe Pravo (International Law) (Moscow, 1970) p. 279.

Whereas the Soviet Union finds it convenient to invoke the principle of Sovereign equality to support the claim of equality by a smaller state to the larger states, the same principle has been invoked by it to support its insistence that the so called right of veto of the permanent members should be left intact.³⁰ However, at the same time, the Soviet Union agitates for the geographical division of the non-permanent seats of the Security Council. For example, in 1963 it proposed increasing non-permanent membership of the Security Council as such to embrace the six geographical regions of the world namely, - Asia, Africa, East Europe, West Europe, Latin America and the Middle East. It should be noted that no mention was made of the permanent seats.³¹

30. See Kurs Mezhdunarodnovo Prava. (Treatise on International Law), (Moscow, 1969) Vol. V. pp. 58-64;
Mezhdunarodnoe Pravo. (International Law). (edit). D.B. Levin. (Moscow, 1964) pp. 284-286;
 V.I. Licovskii, Mezhdunarodnoe Pravo. (International Law) (Moscow, 1970). Op. Cit. pp. 279-80.

31. During the author's research tour of Moscow, and in discussions with Soviet Scholars, they claimed the need for the African States to support the Soviet right of veto, since the Soviet Union uses it to defend their (African States) interests.
 However, the Soviet Government found it convenient to veto the admission of Mauritania to the United Nations at the Security Council. The Soviet Government had wanted the simultaneous consideration of Mongolian admission and had also supported the territorial claims of Morocco over Mauritania. On noting the support shown by majority of the African States for Mauritania in its dispute with Morocco, the Soviet Union had no option than to abstain during the voting on the admission of Mauritania when the issue next came up at the Security Council.
 See S/4567/rev. 1.

IX. SOVIET PRACTICE AND THE AFRICAN STATES.

In African-Soviet co-operation, there are instances one might refer to as being incompatible with the principle of sovereign equality. Let us reflect back at some of the elements constituting the principle of sovereign equality. In particular, we refer to -

- (a) the inviolability of the territorial integrity and political independence of states.
- (b) the right of a state to freely choose and develop its political, social, economic and cultural systems.

We shall now examine some related cases.

Whereas the African States understand the principle as a shield of their hard won independence, sovereignty as conceived by Soviets, is a weapon in the struggle of the progressive democratic forces against the reactionary-imperialistic ones. Under contemporary conditions sovereignty is destined to act as a legal barrier protecting against imperialistic encroachment and securing the existence of the most advanced social and state forms - socialist and a people's democracy; it is a guarantee of the liberation of the oppressed peoples in colonies and dependent territories from the imperialistic yoke.³²

Sometimes, observers have wondered whether the Soviet claims and doctrines of championing the interests of the developing nations does not in fact contradict the principle of sovereign equality.

32. Professor Korovin. Pravda, May 3 1947 as in Soviet concept of the state, international law and sovereignty. A.J.I.L. 43, 1949 p. 31.

On the attainment of independence by the Congo (Leopoldville) in 1960, Prime Minister Lumumba stated at the United Nations headquarters on July 25 1960 that ideological questions are of no interest to Congo, and said that the Congo policy of positive neutralism sought contacts with all nations having noble intentions.

During the trouble in the Congo, the United Nations in a plan, provided for the creation of its administration to co-operate with the civilian regime in solving that country's problem. In the Soviet Government views, the creation of a consultative group under the control of the United Nations with wide powers was tantamount to the restriction of the sovereignty of the Congo and to its de facto transformation into the position of a trust territory, which was contradictory to the Charter.³³

The United Nations Secretary General explained that the proposal for a civilian operation was already discussed with the Prime Minister of the Congo with his approval. Nevertheless, the Soviet Government continued to oppose the UN operations and insisted that the troops of the United Nations should be withdrawn because their continued stationing was an infringement on the sovereignty of the Congo.³⁴ As a result, the Soviet Government refused to contribute a kopiek

33. N.Y.T. 21 August 1960.

34. Ibid.

to the Congo operations.³⁵ Certain members of the United Nations argued that Article 19 of the Charter should be invoked against the U.S.S.R. for its refusal to fulfil its financial obligations.

From the above, it might be argued that the Soviet stand was in defence of the sovereignty of the Congo, but after the death of Lumumba, the conflict that took place between the succeeding Government of the Congo and the Soviet Union put into doubt the genuity of the Soviet Union defence of the sovereignty of the Congo. The succeeding Congo Government accused the Soviet Union of subversion by giving active support to anti-government activities. This particular case will be later treated under the principle of self-determination, however it should be mentioned here that acts of espionage and subversiveness on the territory of a sovereign state contravene the territorial integrity and political independence of the state concerned, and equate to denial of such state the legal right to choose and develop its political, social, economic and cultural systems.

35. At the 15th Session of the General Assembly the Fifth Committee heard the Soviet argument to the effect that only the Security Council and not the General Assembly, could allocate money for military operations. Many states pointed out to the Soviet Government that the Security Council had, in fact, authorized the military operation but that the Charter left the apportionment of costs to the General Assembly.

An important aspect of the principle of sovereign equality is the need for states to respect constituted authorities of one another's countries, such as the police, customs etc. The Soviet Embassy no doubt contravened this vital element of sovereign equality by trying to take laws into its hands in Guinea. The case involved a Russian teacher, Miss Svetlana Ushakova, who was then working in Guinea. The Soviet Embassy was to send Svetlana Ushakova to the Soviet Union against her will. The lady 'committed' an offence by 'fraternising with Guineans'. She was to have travelled on a fake passport prepared by the Soviet Embassy. Mr. Dmitri Degytar, the Soviet Ambassador himself led her to the airport where the fake passport was discovered by custom officials.

Miss Ushakova was returned by the Guinea authorities who kept vigil on her. An attempt was made by the Soviet authorities in Guinea to kidnap Miss Ushakova. It was again foiled by the Guinea security who arrested and locked up the two Russians (one of them was the Cultural Attache of the Soviet Embassy).³⁶

The above case can lead us to one conclusion - inconsistency in the acceptance of an obligation and the actual practices of states.

36. Daily Telegraph. 14 February 1963.

X. PRINCIPLE AND IDEOLOGICAL CONFLICT.

In African-U.S.S.R. co-operation, at least from the above cases, we shall now examine the reasons for the conflicts that often arise in the attempt to apply the principle of sovereign equality.

The Soviet Union's selective attitude towards international law causes it to reject outright or re-interpret in most cases, basic norms and institutions of international law which in itself is considered to be a product of the capitalist system. Such re-interpretation is made adjusted to the Marxist doctrine. To analyse the Soviet attitude to this principle, it is considered equally essential to explain briefly, the Marxist - Leninist theory of State and Law.

The State is defined as the product of irreconcilable class antagonisms in a society, and being an instrument of class dictatorship, the state reflect class interests. The nature of law is reflected in its class structure. Sovereignty is a political-legal quality of state-power reflecting its independence of any other power within and without the boundaries of the country and consisting in the right of the state to run its affairs independently and freely.

However, Marxism claims that the sovereignty of a socialist state is identical with proletarian class interests, and that national interests are subordinate to proletarian class solidarity, which it is claimed, constitutes the principle of proletarian internationalism - a class struggle in essence.

It is then claimed that class solidarity and national sovereignty are complementary and dialectically interdependent.

Both in the Congo and Guinea, during the period as above, the Governments of Lumumba and Sekou Toure while proclaiming a policy of non-alignment had sympathy for socialism. The Soviet Government was aware of this, and it was this fact which prompted the attempt to apply its own interpretation of the principles of international law in its relationship with them.

But as it became apparent, the attempt to limit the sovereignty of a prospective socialist state in the name of proletarian internationalism has never met with kind reception in the African States in general. This was reflected in the speech of President Sekou Toure at the Soviet Trade Exhibition in Guinea and before the Soviet Deputy Prime Minister - Mr. Mikoyan. He declared,

"Here and now, we pay homage to the important contribution the U.S.S.R. brought to the people and Government of Guinea. The spirit of this co-operation must remain firmly based on the concept of equality of states on honesty and reciprocal friendship, especially as our people renounce unequal connections."

XI. SELF-DETERMINATION.

LEGAL OR POLITICAL TENET.

The principle of self-determination of peoples as a legal concept has been vigorously debated. As in the preceding discussion, authors and lawyers are divided on

the matter. The core of the division was expressed by Professor Emerson when he stated that while the concept lends itself to simple formulation in words which have a ring of universal applicability and perhaps of revolutionary slogans, when the time comes to put it into operation it turns out to be a complex matter hedged in by limitations and caveats.³⁷ The principle has received prominent and sharp analysis in Western, Soviet and African legal documents; and on each occasion, the general question has revolved around that of whether the concept is that of international law or international politics.

Professor Goodrich and Dr. Hambro in their joint commentary on the United Nations Charter claimed that the principle was a moral concept expressed in clause 2 of the Atlantic Charter.³⁸ Professor Gross, claiming that nowhere in the Charter has the right to self-determination been established in the legal sense, wrote that

"...subsequent practice as an element of interpretation does not support the proposition that the 'principle' of self-determination is to be interpreted as a 'right' or that the human rights provisions have come to be interpreted as rights with corresponding obligations either generally or specifically with respect to the right of self-determination."³⁹

37. A.J.I.L. 65 (1971), p. 459.

38. Goodrich and Hambro, Charter of the United Nations. (Boston, 1946) p. 61.

39. The Right of Self-Determination in International Law, as in New States in the Modern World and quoted by Rupert Emerson, Op. Cit. p. 461.

Professor De Visscher affirmed that self-determination in its total lack of precision, in no way represented a principle of law.⁴⁰

"If as a principle of political action, the right of national self-determination is in harmony with the spirit of Chapters XI and XII of the Charter, it is significant that, in these Chapters that deal with non-self governing territories and the international system of trusteeship, the drafters avoided this expression, which is, obviously too vague for a text of legal import."⁴¹

Others insist on the non binding character of the General Assembly resolutions.

To the views expressed earlier⁴² on the legal significance of General Assembly Resolutions may be added the conclusion of Dr. Higgins (with which the writer concurs) that

"What is required is an examination of whether resolutions with similar content, repeated through time, voted for by overwhelming majorities, giving rise to a general opinio juris, have created the norm in question."⁴³

Although it may be conceded that prior to the adoption of the United Nations Charter, the principle of self-determination as a legal right was not generally recognised - the Aaland Islands dispute tend to support this view; and the report of the Commission of Jurists observed that positive

40. Theory and Reality in Public International Law (Princeton, 1968), p. 133.

41. Ibid. Footnote 13, p. 437.

42. See pp. 7 -12 above.

43. The United Nations and Law Making: The Political Organs A.S.I.L. 64, (1970), p. 43.

international law did not recognize the right of self-determination of peoples to separate themselves from the state to which they belong.⁴⁴ Dr. Higgins among others has indicated that the legal position may have changed. She quoted numerous cases on decolonization including those of Morocco and Algeria, and other relevant United Nations documents constituting as

"...a trend towards acknowledging self-determination as a legal right; and, moreover a legal right, based on provisions in an international instrument."⁴⁵

The birth of self-determination as a legal principle therefore finds its root in Article 1(2) of the Charter. Its mere insertion in this instrument would not of itself be conclusive. However, it must be noted in addition that the right to exercise it has constantly been invoked successfully by member states. Moreover, state practice

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44. League of Nations, Official Journal, (Oct. 1920) Special Supplement, 3. pp. 1-19; also, for particular analysis on the case, see James Barros, Aaland Islands Question: Its Settlement by the League of Nations. (Yale, 1968), pp.282-293
45. The Development of International Law through the Political Organs of the United Nations. (Oxford, 1963), p. 100. On the question of self-determination in general, Professor Ian Brownlie, Principles of Public International Law. (Oxford, 1966), pp. 482-6; Mirkin-Guetzevitch, 83 Hague Recueil (1953)(II), pp. 326-51; Grzybowski, Soviet Public International Law. (Durham, 1970), pp. 142-6; V.I. Licovskii, Mezhdunarodnoe Pravo, (International Law). (Moscow, 1970) pp. 56-61; Kurs Mezhdunarodnovo Prava, (Treatise on International Law). (edit. Chikvadze), (Moscow, 1967), pp. 202-25; Kurs Mezhdunarodovo Prava, (Treatise on International Law), (edit. F. Kozhenikov,)(Moscow, 1966), pp. 124-29; Mezhdunarodnoe Pravo, (International Law) (edit. Levin and Kalushnaya), (Moscow, 1964) pp. 115-37; Rupert Emerson, Self-Determination, A.J.I.L. 65 (1971), pp. 459-475.

and that of the United Nations and its organs have portrayed the principle as one of international law and not merely one of politics. However, although it cannot be denied that specific instances have provoked arguments on each side, with the issues somewhat beclouded, nevertheless in general it seems inescapable that self-determination has developed into an international legal right though the extent and scope of the right is still open to some debate.

XII. ELEMENTS OF SELF-DETERMINATION.

The principle of self-determination implies, among other things, the right of a state to attain and defend freedom and independence. The historical existence of the African continent was linked with the political concept of the principle till the end of the second world war. As a legal concept, it became established with the inception of the United Nations. It is of interest to note that the principle was inserted in Article 1(2) at the instigation of the Soviet Union which has as well its own historical connection with the principle.

The Soviet Union claims that its efforts were largely instrumental in introducing the concept; and it maintains that it stands not only for the right of each nation to set up a national state of its own, but also for its right to establish a social system and choose a form of government which it believes to be appropriate and necessary to ensure its economic and cultural development.⁴⁶

46. D. Baratashvili, International Law Principles of Peaceful Co-existence, International Affairs, II (Moscow, 1972), p.24.

The principle of self-determination has two components. These have been described as (a) the internal constitutional aspect involving the right of the people freely to choose their political status and (b) external self-determination associated with international political status.⁴⁷ Though the two elements are inserted in the documents of the United Nations,⁴⁸ they have often been subjected to confusing analyses. The Western powers (especially the former colonial powers) wonder why they should be obliged under international law to contribute political and material support to the gaining of political independence by the colonial peoples but denied the privilege of intervening, directly or indirectly in the internal affairs of the state concerned.

Both the Soviet Union and the African States find the two elements of the principle compatible with their aspirations. As a principle of co-operation, the Soviet Union in particular finds it a useful slogan in support of the external self-determination of the African States; and whereas it is inserted in its numerous agreements with the African States, the latter have on occasions accused the Soviet Union of violating the principle.

47. Asamoah, *Op. Cit.*, p. 166; also Emerson, *Op. Cit.*, pp. 465-66.

48. Resolutions 1314 (XIII) 12 Dec. 1958; 1514 (XV) 14 Dec. 1960; 1956 (XVII) 11 Dec. 1963.

The Soviet's general attitude towards internal self-determination can be explained in the fact that, although from the very beginning the Soviet leadership proclaimed a neat and precise doctrine with the rules governing international relations concerning territory, it infrequently (and then only partly) adhered to its own rules regarding settlement of territorial questions. For example, on no occasion has the Soviet Union ever arranged a plebiscite on the issue of the political destiny of a territory.⁴⁹ In the co-operation between the Soviet Union and the African States, there are two understandings of self-determination as above - external and internal.

XIII. EXTERNAL AND INTERNAL SELF-DETERMINATION

In the hierarchy of priorities on the burning issues at the United Nations, the African States attach great importance to the question of self-determination. In this they enjoy the backing of the Socialist bloc headed by the Soviet Union. Although majority of African States are independent, there are still a few territories under colonialist regimes, and it is the view of the independent states that their own independence is of little significance as long as other parts of the continent are not free.

49. Grzybowski, Op. Cit., p. 142.

This view finds sympathy among the entire membership of the United Nations, though the Soviet Union (of course now rivalled by China) appears to be the chief sympathiser with it. It is essential to note as well that in Chapter XI of the U.N. Charter members of the United Nations which have or assume responsibilities for non-self-governing territories recognize "and accept as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of these territories and to this end:

...(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions..."

At least on questions related to this principle, there has always been complete unanimity of view between the Soviet Union and the African countries in their voting practices. A survey of some of the United Nations Resolutions on the topic indicates the voting positions of some of the powers, as shown below -

Vote Tally of the Powers on Selected African Issues at Sessions of the General Assembly

China is omitted from the Chart since the Nationalist Government of China which until 1971 has represented China at the U.N. had little influence on the issues concerned.

Country	1	2	3	4	5	6	7	8
U.S.S.R.	Y	Y	Y	Y	Y	Y	Y	Y
France	A	N	A	A	N	N	N	N
U.K.	A	N	A	Y	N	N	N	N
U.S.A.	Y	N	A	Y	N	N	N	N

Y = Yes
A = Abstained
N = No, Against

Issue Number

1. Resolution 1654 (XVI) - a 38 power draft on establishing a Special Committee on Colonialism.
2. Soviet Amendment to 38 power draft settling a 1962 target date for the elimination of colonialism.
3. Resolution 1514 (XV) - Declaration on the Granting of Independence to Colonial Countries.
4. Resolution 1742 (XVI) - an Afro-Asian resolution calling for self-determination in Angola.
5. Resolution 1761 (XVII) of 6 November 1962 recommending sanctions and Security Council action against South Africa on apartheid.
6. Resolution 1807 (XVIII) of 14 December 1962, approving Special Committee report on Portuguese territory and requesting a halt to the sale and supply of arms to Portugal.
7. Resolution 1819 (XVII) Supporting immediate Independence for Angola and requests Security Council Action.
8. Resolution 1899 (XVIII) Affirms right of South West Africa to self-determination and calls for an oil and arms embargo against South Africa.

The support given by the Soviet Union is in conformity with the elements of the principle of self-determination particularly that which calls on members to render assistance to the United Nations regarding the implementation of the resolutions to bring a speedy end to colonialism, having due regard to the will of the peoples concerned.

As seen from the few resolutions noted above, the Western powers have embarrassingly been constantly opposed to African interests at the United Nations on matters related to self-determination, while the Soviet Union has always been a constant supporter. It is irrelevant to attempt to discover the motives behind the differing conduct of the Soviet Union and the Western powers on this matter. For the present purposes it is enough to point out that there is general agreement between the Soviet Union and the African States with regard to their attitudes on the question of self-determination, in its external context.

Co-operation between the Soviet Union and the African States in achieving the adoption of relevant United Nations instruments on self-determination is treated in the next chapter under the heading of co-operation at the United Nations. The legal significance of the principle itself may be briefly examined.

XIV. LEGAL SIGNIFICANCE OF SELF-DETERMINATION.

The principle of equal rights and self-determination of peoples as contained in the Declaration on Principles of Friendly Co-operation, was not the first attempt to establish this principle. The United Nations Charter itself is the chief legal source of the principle. Further, as early as the 7th session, General Assembly Resolution 637 (VII) called upon all states to "Recognise and promote the realization of the right of self-determination of the peoples of non-self governing and trust territories." Resolution 1514 (XV), the Declaration on the Granting of Independence to Colonial Peoples and Countries set out elements similar to those contained in the principle of self-determination.

There were, however, significant legal changes and improvements in the formulation of the latter. The substantive provisions as set out in the body of the resolution are as follows:

- (a) Colonialism is illegal.
- (b) All peoples have the right to determine freely their political status and pursue their economic, social and cultural development.
- (c) Unpreparedness should not be used as a pretext for delaying independence.
- (d) Forcible actions to maintain colonialism shall cease.

- (e) Immediate steps shall be taken to transfer all powers to the indigenous inhabitants, without any conditions or restrictions, in accordance with their freely expressed will and desire.
- (f) Any attempt aimed at the political or total disruption of the national unity and territorial integrity of a country is illegal.
- (g) All states shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration on Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all states, and respect for the sovereign rights of all peoples and their territorial integrity.
- (h) The right that peoples may freely dispose of their natural wealth and resources, for their own ends without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.⁵⁰

The tenor of Resolution 1514 (XV), as can be seen, is not a mere declaration of general statements, but an enunciation of binding rules of law. This is evident in particular from point (g) above which lays down that all states shall observe faithfully and strictly the provisions of both the declaration

50. U.N.G.A.O/R 15th Session. 947th Meeting. Resolution 1514(XV).

and that of the Charter, from which the declaration took its source. Moreover, the resolution has been qualified as the most frequently cited resolution in the United Nations and as a document which most of the African and Asian nations regard

"Slightly less sacred than the Charter and as stating the law in relation to all colonial situations."⁵¹

There are certain improvements on Resolution 1514 (XV) in the formulation of the principle of self-determination as contained in the Declaration on the Principles of Friendly Co-operation. First, the opening paragraph of the principle recognises that all peoples have a universal right to self-determination; and all states (paragraph 2) have the duty to promote, through joint and separate action, realization of this principle, and to render assistance to the United Nations in implementing it. As may be seen, a considerable measure of responsibility is placed on states to see to its implementation.

One of the criticisms of Resolution 1514 (XV) was that it went beyond the provisions of the Charter and the practice of the organs up to that time in so far as it regarded colonialism as illegal, through its emphasis on independence as the only legitimate goal, and also in so far as it called for immediate independence without regard to the preparedness of the territories. Professor John Hazard advised, for instance,

51. Robert Rosenstock, The Declaration of Principles of International Law Concerning Friendly Relations: A Survey. A.J.I.L. 65 (1971) p. 730.

that self-determination should be

"...couched in phrases rejecting its application in any place and at any time without regard to preparation of the people concerned for the responsibilities of independence."

adding further that although

"...it will be hard to insert such restrictions in the face of inflamed public opinion in the developing areas, yet the codifiers must do so if their code is to foster peace."⁵²

The Soviet Union claims that

"the concept of preparedness of colonial peoples for independence is a colonialist concept which is contrary to the international law of today,"⁵³

and that the relevant part of Resolution 1514 (XV) as to immediate independence without regard to the preparedness of the territories is correct.

The Declaration of Principles of Friendly Co-operation avoided this mistake by formulating (paragraph 2b) the obligation to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned. In simple terms, if a governed people expressed the wish to continue to enjoy the protection of the governing state, the consequent continuing protection afforded is not illegal.

Apart from full, immediate independence which Resolution 1514 (XV) recognises as the only means of self-determination,

52. Codifying Peaceful Co-existence. A.J.I.L. 55 (1961) p. 118.

(paragraph 4) recognises free association or integration with an independent state or the emergence into any other political status freely determined by a people. These, plus the original establishment of a sovereign and independent state, constitute modes of implementing the right of self-determination.

There were wide divisions between the Eastern bloc and the developing countries on one side, and the West on the other, and the ability of the Special Committee (set up to draft the principles) to bridge these deep divisions during the drafting of the principles, has been acclaimed as a demonstration both of international co-operation and of the creativity of the legal mind.⁵⁴

The success of the struggle to achieve the adoption of the principle of self-determination in the history of the United Nations has been largely due to the very close collaboration which existed between the Soviet Union and the African States. The effective application of the principle itself is still spearheaded by the same states in conjunction with other developing countries. This in effect complies with an important element of the principle which affirms the duty of every state to promote, through joint and separate efforts, the realization of the principle, and to render assistance to the United Nations in carrying out its responsibilities regarding its implementation.

54. Rosenstock, Op. Cit., p. 731.

XV. SELF-DETERMINATION AND SOVIET PRACTICE IN AFRICA.

It seems to the writer that if this principle in its external context has achieved considerable success in co-operation between the Soviet Union and the African States, notably at the United Nations, it has suffered certain setbacks in its internal context - concretely in controlling the relationship between the Soviet Union and the African States.

Operative paragraph 2 of Resolution 1514 (XV) states that by virtue of the right of self-determination, people have the right to determine their political status and to pursue their economic, social and cultural development. Similarly, paragraph 1 of the principle of self-determination adds to the above that states have the duty to respect this right in accordance with the provisions of the Charter.

Taken at their face value, Soviet actions and pronouncements have tended to indicate the adherence of the Soviet Union to the principle. Such adherence however, has been known to last only for the early stages of the achievement of political independence by these states. During the visit to the Soviet Union of the President of the newly independent state of the Sudan in July 1961, the President commended the great part played by the Soviet Union in supporting the principle of self-determination for the Sudan in 1948. He further recalled that the Soviet Union was among the first to recognise the Sudan and to support its admission to the United Nations

adding that in the "material and economic struggle for prosperity and progress" the U.S.S.R. was "the first country with whom we concluded a trade agreement."⁵⁵

Such actions were fully in accordance with the spirit of promoting self-determination, and were characteristic of the initial co-operation between the Soviet Union and the African States. At a later stage of their co-operation, the African States have often accused the Soviet Union of interfering with their rights to determine their political status and to pursue their economic, social and cultural development. Because of the interwoven connections between the principles of self-determination and non-intervention, the major cases are treated under the latter principle, since the main element involved is strictly interventionary. However, it should be stated that the Soviet Union's attitude to internal self-determination in the African countries and the developing countries in general is influenced by its ideological stance.

The Soviet Union sees decolonization as a result of the victory of the socialist revolution in the Soviet Union.

"It was the October revolution which, for the first time in world history, advanced the principle concerning the right of all nations without exception to self-determination..."⁵⁶

55. Sunday Times, 18 July 1961.

56. Contemporary International Law. Edit, G. Tunkin, Op. Cit. p. 52.

But, while it accepts the right of every state to determine its internal system,

"...the interests of progress of mankind, and in the first instance, the interests of the independent peoples, demand that the war of national liberation results in non-capitalist form of development."⁵⁷

This probably explains the Soviet attitude to the observance of the principle of self-determination in the African countries, an attitude which was clearly expressed in the remark of the outspoken former Premier of the Soviet Union, Mr. Kruschchev, to the leader of the Egyptian Parliamentary Delegation visiting Moscow sometime in 1961. He told Mr. Sadat:

"You probably believe I want to tear you from Arab Nationalists to the communists. Of course, I don't want to do this now. But I feel that some of you⁵⁸ present here will turn communists in future..."

The African countries, have never allowed their co-operation with the Soviet Union to determine or influence decisively their political status.

In his own reply to the above remark, Mr. Sadat reflected the general views of the developing countries. He told

57. Professor V.K. Sabakin and Dr. R.A. Tasmohamedov, Natsionalno-Osvabaditelnoe Divizheniye Narodov i Mezhdunarodnoe Pravo, (War of National Liberation Movement of Peoples and International Law) as in Treatise on International Law, (Moscow, 1972) Op. Cit. p. 66.

58. N.Y.H.T., 11 June 1961.

Mr. Kruschchev that the U.A.R.

"respects the ideologies of others and expects others to respect its own ideologies,"

adding that the U.A.R.'s fight against communism

"was confined within our national boundaries and prompted by the attitude of the local communists to our national revolution."⁵⁹

In fact a good example of the African countries' insistence on maintaining their internal self-determination is to be seen in the attitude of the Arab countries of North Africa. Soviet main interests in Africa lie particularly in the northern part of the continent. Egypt tops the list of Soviet trading partners in Africa, followed by Algeria. Trade between the Soviet Union and Algeria rose from 22.2 million roubles in 1966 to 118.3 million roubles in 1970. Also, the first ever Soviet political agreement of Friendship with any African country was signed with Egypt in 1971. In economic co-operation, the Arab countries of Africa are the closest partners of the Soviet Union of all the African countries.

It is of interest to note however, that the communist party is banned in all of these countries. This is an expression of internal self-determination which does not favour the position of the Soviet Union in these countries, though Premier Kruschchev claimed:

"we support Abdel Nasser knowing that he is not a communist, he even puts communists in prison in his country. But this is an internal matter which concerns him and his people."⁶⁰

59. Ibid.

60. The Guardian, 5 May 1961.

Since Mr. Nasser's arms deal with the Soviet bloc in 1955, and subsequent loans to Egypt, notably that for the building of the Aswan dam, it has been assumed that he was irretrievably in the Soviet camp. He, however, has always insisted that his policy was one of positive neutralism and non-alignment.

Despite this defect in the application of self-determination in the internal context of the concept, it would be wrong to dismiss or downgrade its importance. As stated earlier, the fact that the rules and principles of international law are from time to time violated is no justification for asserting their non-legal status. Moreover, the Soviet Union which is often the accused in this case recognises the binding nature of the rules concerned and has often denied that its conduct constituted a violation.

XVI. COUP D'ETAT, SECESSION, WAR OF NATIONAL LIBERATION AND SELF-DETERMINATION.

In view of the frequency of the coup d'etat and changes of government or secessionary activities in the African continent, and the involvement of the big powers (the Soviet Union included) directly or indirectly, in these activities, paragraph 1 of the principle of self-determination has come to be cited as having been violated. In the case of the Soviet Union, the reference is to its support for the suppression of secessionary movements in some African countries. Of particular

relevance was the Nigerian Civil War, during which a part of the country proclaimed its existence as the independent state of Biafra.⁶¹

Was the Soviet Government's supply of arms to the Nigerian Government not a form of external intervention in the internal affairs of the country? By the Soviet Union support for the Nigerian Government, was Biafra not denied the right to self-determination?

Paragraphs 7 and 8 of the principle of self-determination have been quoted by the Soviet authorities to justify their position. Paragraph 8 in particular authorises states to refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other country.

In the view of the writer, it should be stated that political and economic considerations dictated the Soviet stand, although these indirect motives might equally well be covered by the legal points implicit in the principle of self-determination. It should as well be remarked that the Soviet Government's attitude was similar to, and probably prompted by, the attitudes of the Organization of African Unity and the United Nations. The Organization of African Unity, for instance, established a consultative committee comprising six Heads of State to look into the Nigerian crises.

61. See, D.A. Ijalaye, Was 'Biafra' at anytime a state in International Law? *A.J.I.L.* 65 (1971) pp. 551-559; F. Okoye, International Law and the African States. (London, 1972) pp. 151-153.

At the opening session of the Mission's meeting in Lagos, Emperor Haile Selassie of Ethiopia stated the view of the O.A.U. :

"The Organization of African Unity is both in word and deed committed to the principle of unity and territorial integrity of its Member States. And when this Mission was established by our Organization, its cardinal objective was none other than exploring and discussing ways and means together with the help of the Federal Government, whereby Nigerian national integrity is to be preserved...The national unity and territorial integrity of Member States is not negotiable. It must be fully respected and preserved. It is our firm belief that the national unity of individual African States is an essential ingredient for the realization of the larger and greater objective of African Unity."⁶²

Similar views were expressed by the former Secretary-General of the United Nations, U Thant, at a press conference in 1970:

"So, as far as the question of secession of a particular section of a Member State is concerned, the United Nations' attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its (a) Member State."⁶³

These views are of importance in that the Soviet Union has always adopted the practice of patterning its African policy along the O.A.U.'s decisions, realizing fully well that such represent the majority opinion of the African States.

If the Soviet Government support for the Nigerian Government can be defended on the argument based on paragraph 8

62. Report on the O.A.U. Consultative Mission to Nigeria, Lagos, n/d, p.9.

63. U.N. Monthly Chronicle, February, 1970, p.36.

of the principle of self-determination, the question then arises as to the justification of the Soviet stands on Rhodesia, South Africa and the Portuguese colonies. With reference to South Africa and Portugal, the Soviet Government's support for the liberation movements in material terms is not hidden. It claims that

"the Soviet Union has provided and will go on providing disinterested fraternal support to the African peoples in their struggle for independence."⁶⁴

To a large degree, National Liberation Movements are accorded the status of subjects of contemporary international law,⁶⁵ so that while the Soviet Union recognises the National Liberation Movements of South Africa and Portuguese colonies in Africa as subjects of international law, it does not recognise the governments in control of these areas. The open support given to these liberation movements, is in accord with the Soviet concept that

"The National Liberation Movement of the African peoples is an inalienable component of the world revolutionary process."⁶⁶

But then the Declaration on Non-intervention forbids intervention "directly or indirectly, for any reason whatsoever" in the internal affairs of any other state. Though it seems that the United Nations Declaration contradicts

64. Soviet News, 26 May 1970.

65. Contemporary International Law. edit. G. Tunkin, Op. Cit. pp. 54-55.

66. A. Kiva, Africa: The National Liberation Movement Today. International Affairs, August 1972, p. 34.

itself here, the general part of the declaration stated that, in their application and interpretation, the principles in their entirety are interrelated and each principle should be construed in the context of the other principles.⁶⁷

Consequently, a provision which seems to forbid states from intervening in the affairs of any other state for any reason whatsoever, is mitigated in effect by the duty of every state to promote, through joint and separate action, realization of the principles of self-determination as in operative paragraph 1 of the principle of self-determination. In paragraph 5 of the principle, it is clearly stated that every state has the duty to refrain from any forcible action which deprives any of the peoples referred to of their right to self-determination, independence and freedom. It continues:

"in their actions against, and resistance to, such forcible action, such peoples are entitled to seek and to receive support in accordance with and the purposes and principles of the Charter."

The Rhodesian case may be noted. The unilateral declaration of independence by the regime of that country was an act of rebellion and the British Government has refused to concede the validity of the unilateral declaration of independence. It requested Member States of the United Nations to enforce economic sanctions against the regime in an effort to bring the rebellion down.

67. General Part, U.N.G.A. Resolution 2625 (XXV) 24 October 1970.

Apart from the unilateral declaration of independence which was an internal matter of Rhodesia, like South Africa and Portugal, the conduct of the Rhodesian regime represents a continuing violation of paragraph 7 of the principle of self-determination. The regime does not fully represent the whole people belonging to its territory "without distinction as to race, creed or colour."

On these submissions, the Soviet Union's support is in accordance with the principle of self-determination of the peoples under these regimes. It should perhaps be pointed out that the majority of the African States are opposed to these regimes, and that the O.A.U. openly supports the liberation movements in these areas. From the above, it may be seen that while in the external concept of the principle of self-determination, Soviet-African co-operation has so far been successful, the same cannot be said of the right to internal self-determination.

XVII. PRINCIPLE OF NON-INTERVENTION.

INTRODUCTION.

Practice in contemporary international affairs is testimony to the proposition that as the interdependence of states forged through economic, political and cultural co-operation increases, so too interventionary acts by one state into the affairs of another are bound to increase. This view was well characterised in the remarks of the United Kingdom delegate to the 14th meeting of the General Assembly. Mr. Sinclair stated that

"In considering the scope of 'intervention' it should be recognized that in an interdependent world, it is inevitable and desirable that states will be concerned with and will seek to influence the actions and policies of other states, and that the objective of international law is not to prevent such activity but rather to ensure that it is compatible with the sovereign equality of states and self-determination of their peoples."⁶⁸

This view depicted the general view of the Western powers after the final draft of the principle of non-intervention by the Special Committee.⁶⁹ The historical development of the principle has been the subject of wide controversy.⁷⁰ The General Assembly became interested in it, particularly as from the 20th General Assembly, when the Soviet Union delegate proposed that the Assembly consider as an important and urgent matter,

"The inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty."

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68. Mr. Sinclair (U.K.) Doc. A/AC. 119/SR. 26, p.6.
 69. Mr. Monod (France) Doc. A/AC. 119/SR. 28, p. 10.
 Mr. Schwebel (U.S.A.) Doc. A/AC. 119/SR. 29, p. 10.
 70. See for example. Oppenheim's International Law, (ed. H. Lauterpacht) 8th ed. Vol. 1 (1955) pp. 304-319. and footnote references therein; L.M. Goodrich, The United Nations (New York, 1955), pp. 74-79; Thomas and Thomas Non-Intervention: the law and its impact on the Americas. (Dallas, 1956); Sir. H. Lauterpacht, The development of International Law by International Court, (London, 1958) pp. 317-318; Hans Kelsen, Principles of International Law. ed. R. Tucker, (New York, 1966), pp. 294-300; International Law (Moscow, N/D), Op. Cit. pp. 112-6; Kurs Mezhdunarodnovo Prava: (Treatise on International Law) (Moscow, 1972) pp. 42-43.
 71. U.N. Doc. A/5997 (1965).



After much argument, a compromise text submitted by the countries of Latin-America, Asia and Africa resulted in the adoption of Resolution 2131 (XX) of 21 December 1965.⁷² The resolution did not solve the controversies over the principle of non-intervention.

For instance, in the view of the United States of America, the declaration contained in the resolution was

"a statement of attitude and policy - a political declaration with a vital political message - not a declaration or elaboration of the law governing intervention."

It further stated that a Special Committee of the Assembly on the Principles of International Law concerning Friendly relations and co-operation among States had been given the precise job of enunciating that law and declared:

"thus we leave the precise definitions of the law to the lawyers."⁷³

The principles of International Law concerning Friendly relations were later adopted and we shall examine how far the principle of non-intervention has contributed to world peace.

XVIII. INTERVENTION AND DOMESTIC JURISDICTION (DEFINITION)

Perhaps before starting to analyse the legal interpretation and application of the principle, it is equally essential to discuss an important source of conflict over the principle.

72. U.N.G.A. Resolution 2131 (XX), G.A. O/R. Suppl. 14 (A/6014) p. 14.

73. Ambassador W.C. Yost (U.S.A.) U.N. Doc. A/C 1/SR. 1423.

Article 2(7) of the Charter states:

"Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

There are inconclusive arguments as to (a) what constitutes intervention and (b) what matters fall essentially within the domestic jurisdiction of States.⁷⁴ Professor Oppenheim defines intervention as

"dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual conditions of things."⁷⁵

In his own submission, Dr. James N. Rosenau singled out two characteristics both of which must be present for an action to be interventionary. Such an act, he stated must be both convention-breaking and authority orientated, adding that the behaviour of one international actor toward another is interventionary

"whenever the form of the behavior constitutes a sharp break with then-existing forms and whenever it is directed at changing or preserving the structure of political authority in the target society."⁷⁶

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74. L. Preuss, Article 2, Paragraph 7 of the Charter of the U.N. and Matters of Domestic Jurisdiction. Hague Recueil, (1949, 74), pp. 547-643;
F. Emmacora, Human Rights and Domestic Jurisdiction (Article 2, Paragraph 7 of the Charter, Hague Recueil, (1968, 124), pp. 371-451.
75. Oppenheim's International Law, Op. Cit., p. 305.
76. Intervention and the Developing States - Regional Meeting A.J.I.L., 63, (1969), pp. 306-7.

Commenting on Professor Oppenheim's definition, Professor Goodrich noted that such a narrow definition, implying as it does the use of force, certainly could not have been intended, since Article 2(7) specifically excludes from the operation of the principle enforcement action under Chapter VII of the Charter.⁷⁷

Contrary to Professor Oppenheim's emphatic assertion that intervention proper is always dictatorial interference as distinct from interference pure and simple,⁷⁸ we shall cite cases later to prove that there are other forms of intervention proper which need no attribute of force. In Soviet-African co-operation, incidents of journalists, diplomatic agents and businessmen being used to form a net-work of intelligence and propaganda services have proved to be more subversive than the use of force.

Michael Brecher of McGill University noted in reference to Rosenau's definition that many of the penetrative acts about which the developing countries are most concerned lack the sharpness of a break with convention which is necessary to bring them within the proposed definition. The controversy over the principle is such that the view was stated that it is possible to reject the relevance of international law to the question of intervention in the affairs of other states,

77. The United Nations, Op. Cit. p. 79.

78. Oppenheim, Op. Cit. p. 305.

and to regard the whole matter as a question of balance of interests.⁷⁹

As to what constitutes intervention in a matter essentially within the domestic jurisdiction of a given state, Dr. Rosalyn Higgins listed the following as falling within the context of assertions giving rise to claims and denials of the applicability of the domestic jurisdiction.

- (a) Human Rights questions - when a state is accused of denying human rights and fundamental freedom to its own subjects.
- (b) Questions of Colonialism/Self-Determination.
- (c) Questions concerning the government of a state.
- (d) General authority of the United Nations in matters concerning non-self-governing territories.
- (e) Territorial disputes.
- (f) United Nations policing actions.⁸⁰

Soviet authors list two reasons why it is impossible to draw limits to the domestic jurisdiction of a state:

- (a) Determination of a question falling within domestic jurisdiction is partially possible only in connection with a given case;
- (b) Limits of domestic jurisdiction of states is non-stagnant.⁸¹ Domestic jurisdiction is then defined as

79. International Law in the 20th Century. A.S.I.L. (New York, 1969), p. 725.

80. The Development of International Law through the Political Organs of the United Nations. Op. Cit., pp. 58-61.

81. Kurs Mezhdunarodnoe Prava (Treatise on International Law) Vol. II, (Moscow, 1967), p. 185.

"not those issues which a state has no right to make an object of international control, but those, which such a state is not obliged to submit to international control."⁸²

Thus Article 2(7) of the Charter leaves a chaotic situation of freedom of self-interpretation by states. There are abundant evidences in the practice of the United Nations as to the problems created by Article 2(7). Thus, in the case regarding "relations of Member States with Spain" generated by opposition to the internal situation in that country, some members felt that the question of the form and nature of the Spanish Government fell essentially within Spain's domestic jurisdiction, and that operative part of the General Assembly's Resolution 39(1) of 12 December 1946 which recommended that all members of the United Nations immediately recalled from Madrid their Ambassadors and Ministers plenipotentiary accredited there constituted intervention.

The pressure on the General Assembly's resolution 39(1) was later reflected when the Assembly at its 118th Plenary meeting of 17 November 1947, rejected the second paragraph of the First Committee's draft resolution which read;

"Reaffirm its resolution [39(1)]...concerning relations of Members of the U.N. with Spain."

Resolution 386(V) of 4 November 1950 finally resolved

"To revoke the recommendation for the withdrawal of Ambassadors and Ministers from Madrid, contained in General Assembly Resolution 39(1) of 12 December 1946."

82. Ibid.

The above example vividly confirmed the difficulties encountered in the application of Article 2(7).⁸³

Another case was that of the "Treatment of people of Indian origin in the Union of South Africa", brought by India to the attention of the General Assembly in 1946. Both India, and later Pakistan, contended that the South African's Government treatment of people of Indian origin living in South Africa was contrary to the Charter provisions on human rights and to the Cape Town Agreements between India and South Africa.

South Africa objected that the General Assembly could not deal with the matter submitted by India on the ground that the people of Indian origin were South African nationals and any issue related to them fell essentially within the Union's domestic jurisdiction. The core of this submission which was refuted by some members and supported by the others revolved around, inter alia, the meaning of the term "to intervene" and the meaning of the expression "matters which are essentially within the domestic jurisdiction of any state."⁸⁴ Thus, the Soviet Union accused the United Nations of contravening Article 2(7) by sending United Nations' troops to the Congo during the civil war that broke out in that country shortly after independence.⁸⁵

83. Repertory of Practice of United Nations Organs
Vol. 1 (New York, 1955) pp. 61-66.

84. Ibid. pp. 67-75.

85. E.W. Lefever, Uncertain Mandate: Politics of the United Nations Congo Operation. (Baltimore, 1967), p. 244.

Also, although the big powers (U.S.A. in particular)⁸⁶ at the drafting stage of the Charter emphasised domestic jurisdiction primarily for economic reasons and the new states basically for the political reason of defending their independence, as it now stands, it is the reverse. The big powers are using domestic jurisdiction for political reasons and the newly independent states for economic reasons.⁸⁷

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any state in accordance with the Charter as contained in the declaration still leaves certain grounds uncovered. The text of the declaration is sweeping in scope, and a situation of anarchy is created whereby organs of the United Nations and individual states are at liberty to apply their own meanings to particular issues. In that case, certain acts of intervention permissible by international law may in the view of one state be more damaging than direct acts of intervention forbidden by international law.

XIX. ELEMENTS OF NON-INTERVENTION.

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any state, in its paragraph 1 forbids states to intervene directly or indirectly,

86. Goodrich, Op. Cit., pp. 75-76.

87. Abi-Saab, G.M. The Newly Independent State and the Scope of Domestic Jurisdiction. P.A.S.I.L. (1960), pp. 87-90.

for any reason whatsoever, in the internal or external affairs of any other state.

In reference to Soviet-African co-operation, the principle if interpreted literally would suggest that their co-operation amounts to interfering in one another's internal affairs.

But States in their co-operation go beyond the restrictions imposed by the principle. The agreements which regulate such co-operation often state what are the rights and obligations of the parties, and it can be assumed that activities beyond these agreed limits, if detrimental to one of the states, constitute intervention. The other part of paragraph 1 forbids armed intervention, other forms of intervention, or attempted threats against the personality of the state. Paragraph 2 forbids the use or encouragement of such economic, political or any other type of measures to coerce another state. It also forbids states from organizing, assisting, fomenting, financing, inciting or tolerating subversive activities directed towards the violent overthrow of another state or interference in civil strife in another state.

In paragraph 4, every state has an inalienable right to choose its political, economic, social and cultural system without interference in any form from another state.

XX. NON-INTERVENTION AND SOVIET PRACTICE.

The principle is one of the cardinal principles for the development of international co-operation between the Soviet Union and the African States.

"The principle assumes particular importance when there exist States with differing social and economic systems, and with different political systems...The recognition of each people's right to be master in its own country - that is, its unconditional right itself to decide its own social and political system and to determine its internal and foreign policy without any interference whatsoever by other states - offers wide opportunities for fruitful peaceful and mutually advantageous co-operation between States, regardless of differences in their social systems."⁸⁸

According to Soviet writers,

"From the first days of the Great October Revolution the Soviet State has opposed the policy of gross intervention in the internal affairs of other countries by its own peace-loving policy rejecting any attempt to infringe the independence of any states, large or small."⁸⁹

The XX Congress of the Communist Party of the U.S.S.R. stated that the establishment of a new social system in any country is an entirely internal responsibility of the people of that country,⁹⁰ and according to Soviet scholars though Marxist-Leninist doctrine has specified the inevitability of a revolutionary socialist orientation all over the world, it also maintain that revolution "should not be carried out by request or agreement."⁹¹ The Socialist Government of the U.S.S.R. claims that it is opposed to the exportation of revolution.⁹²

88. International Law. Moscow, N/D, Op. Cit. p. 114.

89. Ibid, p. 115.

90. XX Sjezd Kommunisticheskoi Partii Sovjetskovo Sayusa
(20th Congress of the Communist Party of the Soviet Union)
(Gospolitizdat, Moscow, 1956), p. 36.

91. Kurs Mezhdunarodnovo Prava. Vol. II, Op. Cit. p. 184.

92. Ibid.

However, Soviet practice in the past thirteen years of co-operation with the African States seems to indicate that it could no longer adhere to the restraints imposed on it by the principle of non-intervention in the affairs of the African States. The pronouncements reflected in its foreign policy are only necessary for maintaining international co-operation with foreign countries.

After the attainment of independence by Guinea, it immediately established a cordial relationship with the Soviet Union, but decided to develop its country on the policy of 'positive neutralism' - a concept which in certain ways is not in accord with the scientific socialism of the Soviet Government. The Soviet Government through its Embassy decided to intervene indirectly in the internal affairs of Guinea. Mr. Daniel Solod, the Soviet Ambassador was expelled by the Guinea Government in December 1961.⁹³ Incidentally, this was shortly after the arrest of the members of the Teacher's Union of Guinea on charges of "subversive activities and anti-revolutionary activity." Mr. Sekou Toure, the leader of Guinea without mentioning names, alleged that the arrested men had been in contact with a "certain Eastern Embassy" and further stated that the Eastern Embassies and the Communist Party of France were "trying to subvert Guinea's policy of positive neutralism."⁹⁴

93. New York Herald Tribune, 29 December, 1961.

94. Ibid.

Although Mr. Tibour Tounkara (who was Guinea's Ambassador to France) denied the reports that the expulsion of Mr. Solod was connected with the then current left-wing manifestations and stated that he was asked to leave for "personal reasons,"⁹⁵ observers nevertheless believed that the expulsion was certainly connected with the activities of the Soviet Embassy which clearly contravened the non-intervention principle. Mr. Anastas Mikoyan, the Soviet Deputy Prime Minister, made a hurried visit to Guinea shortly after this; and in a statement before his departure he said:

"In rendering support to the people of Guinea in their struggle to consolidate their country's independence, the Soviet Union seeks no advantages for itself, attaches no political or other strings and has no intention at all of interfering in the internal affairs of Guinea, or any other country, or of foisting its ideology on them."⁹⁶

This apparently was a reference to the allegations made by Mr. Sekou Toure which were noted above.

But Tibour Tounkara's statement that Mr. Solod was asked to leave for "personal reasons" could raise some doubts to the claims that the Soviet Union had intervened in the affairs of Guinea. However, there are several means of diplomatic expression in international affairs and relations, and according to Professor MacGibbon though it might be difficult to determine whether a given practice is pursued as a matter

95. The Guardian, 21 December, 1961.

96. Soviet News, 12 January, 1962.

of right or merely as a matter of convenience,

"evidence of either protest or absence of protest may to some extent resolve"⁹⁷

the problem. The expulsion of Mr. Solod who left Guinea Airport without representatives of the Guinea Government to see him off, contrary to diplomatic etiquette, was no doubt a mark of protest.

Also, since the principle of non-intervention leaves to the discretion of each State what constitutes intervention (in addition to its own limited list) it might be assumed (following Guinea's action) that the expression "personal reasons" could as well serve to cover an allegation of intervention. In paragraph 4 of the principle of non-intervention, every state has an inalienable right to choose its political, economic, social and cultural system, without interference in any form by another state. This clause is precise enough and has come to test the real essence of co-operation between the Soviet Union and the African States on several occasions.

In analysing the attitude of the Soviet Union and the African States on the principle, certain facts should be noted. Their basic attitude is a revolutionary one. Both want to change the status quo; and the African States in particular want to reach a more equitable situation in which they can share on an equal footing in the blessings of modern civilization. However, their visions of the desirable situation do not coincide.⁹⁸

97. Customary International Law and Acquiescence
(B.Y.I.L. XXXIII, 1957), p. 118.

98. Abi-Saab, Op. Cit. p. 90.

XXI. MARXIST INTERPRETATION OF NON-INTERVENTION.

Marxist-Leninism has it that there is no basic contradiction between the interests of the working class of a country and those of international proletariat, and that is why there is no objective basis for making a fundamental contrast between national and international responsibility, the tasks and duty of the various detachments of the world communist movement and all forces fighting for the revolutionary transformation of the world.⁹⁹

This assertion formed the basis of Mr. Breshnev's speech justifying the Czechoslovak intervention¹⁰⁰ and also forms the main objective in co-operation with the developing states in general. Furthermore, in the Soviet view, the deep inter-connection of foreign policy and domestic policy, the coincidence of national and international duty and the merging of socialist internationalism and socialist patriotism become the foundation of both international and internal political activity of the Socialist state, a guarantee of the preservation and strengthening of socialist gains and a healthy economy. And the proper combination of the national and international by no means implies infringement, let alone the ignoring of national distinctions, tasks and interests, as claimed by the "falsifiers".¹⁰¹

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99. E. Novoseltsev - Foreign Policy and the Revolutionary Renewal of the World. International Affairs (May, 1971) p.16
100. Izvestiya, November 13 1968, pp. 1-2; The speech which tried to redefine certain principles of international law the socialist way, became known as the Breshnev Doctrine.
101. Novoseltsev, Op. Cit., p. 17.

XXII. AFRICAN STATES' INTERPRETATION OF NON-INTERVENTION.

The above statements which attempt to justify the Soviet bloc's invasion of Czechoslovakia, sound immaterial to the African States' concept of non-intervention. This was reflected in their massive condemnation of the Warsaw Pact invasion of Czechoslovakia. Kinshasa Radio commented that

"Muscovite communism will not in the short term be able to rehabilitate itself, even if from the United Nations rostrum its tenors sing of Soviet condemnation of imperialism, colonialism and neo-colonialism."¹⁰²

Emperor Haile Selassie called the invasion - "a violation of the Charter of the U.N."¹⁰³ So also did the Tunisian Government's statement, which also regretted the loss of prestige the U.S.S.R. would suffer as a result especially as it has been a champion of world decolonization.¹⁰⁴ In Ghana the Ghanian head of government in reference to Czechoslovakian invasion remarked

"events in Europe today should bring home forcefully to all small nations the necessity of supporting and strengthening international organizations as means of safeguarding their sovereignty and territorial integrity."¹⁰⁵

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102. Radio Kinshasa 21 August 1968 as in A.R.B. (P.S. & C.) Vol. 5, 15 September 1968, pp. 1159-61.
103. Radio Addis-Ababa, 22 August 1968. Ibid.
104. Radio Tunis, 22 August 1968, Ibid.
105. Ghanian Times, 27 August 1968, Ibid. As a result of the remark, the representatives of the U.S.S.R., Poland, Hungary and Bulgaria walked out of the State banquet where the statement was made.

The official Tanzanian Government statement remarked that

"this act constitutes the betrayal of all the principles of self-determination and national sovereignty which the Governments of these countries have claimed to support and uphold."¹⁰⁶

President Kaunda of Zambia called it Russian imperialism.¹⁰⁷

The above reactions of the African States confirms their resentment of the Breshnev doctrine and serves a warning that it would not be tolerated in their own countries. But then the point arises if the attitude of the African States did not amount to intervention in matters which fall directly within Soviet domestic jurisdiction. The question becomes more important in view of the fact that some African States decided to maintain diplomatic silence¹⁰⁸ which may be construed as equivalence of non-intervention in what they considered an internal affair of the Soviet Union.

Earlier, we noted that Dr. Higgins listed certain assertions giving rise to claims and denials of the applicability of the domestic jurisdiction criterion. One of these was Human Rights questions, which Professor Oppenheim referred to

106. A.R.B. (P.S. & C.), supra note 102.

107. Ibid.

108. The Government of Nigeria made no official comments, and apart from an editorial in a newspaper, all the media of information refrained from attacking the invasion. A few countries such as Mali and Egypt supported the invasion.

in his book as Humanitarian intervention. According to him,

"There is general agreement that, by virtue of its personal and territorial supremacy, a State can treat its own nationals according to discretion. But there is a substantial body of opinion and of practice in support of the view that there are limits to that discretion and that when a State renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention, in the interest of humanity is legally permissible."¹⁰⁹

The Soviet Union has always been one of the leading advocates of action against the racist regimes of South Africa, Portugal and Rhodesia in their denial to their citizens fundamental human rights and justice. On colonialism and self-determination, its contribution has been enormous. The position of the Soviet Union on these questions has always been highly appreciated by the African States as reflected at the opening meeting of the United Nations Committee on Colonialism in Lusaka. President Kaunda noting that there was a crises of confidence in Africa over the extent of the West's commitment to the United Nations Charter and Human Rights observed that

"the support of the Socialist camp has been consistent, and we cannot but record our appreciation."¹¹⁰

109. Oppenheim's International Law, Op. Cit., p. 312.

110. Guardian, 10 May 1969.

The defence of human rights and self-determination is not restricted to external duties of states alone, as the African States have rightly pointed out.¹¹¹ Such intervention is legally permissible. But it should not be equated with intervention in what concerns the government of a state. In 1948, the re-organization of the Czechoslovakian Government was brought to the attention of the Security Council. The question was placed on the agenda by 9-2, with the Soviet Union dissenting on the ground that the matter was one of domestic jurisdiction.¹¹²

It is the opinion of the writer that although individual writers may criticise the government of a state without their states bearing responsibility for their views, in the Soviet Union where news media are Government controlled and publications must reflect the governments views, it is hard to determine what is truly not government inspired. A leading Russian writer on African Affairs, who at the same time is a deputy of the Supreme Soviet, fiercely attacked the policies pursued by the Zambian President - Kaunda.

In a monograph in July 1970 entitled "This Side of the Zambesi", and published by the A.P.N. (Novosty Press Agency)

111. Radio Moscow in a commentary stated that the progressive African public fully appreciates the resolute actions of the Soviet Union in thwarting counter-revolution in Czechoslovakia; but, "Not all understand that the defence of the Socialist Czechoslovakia () tantamount to the defence of the African Nation's independence of Zimbabwe, South Africa, Angola, Mozambique and Guinea Bissau for their freedom." A.R.B. (P.S. & C.) Vol. 5, No. 10, p. 1221.

112. S.C.O.R. 268th Meeting, pp. 101-2.

- an authoritative organ of the state - Mr. Kudryatsev rejected the "philosophy of humanism" propounded as state policy by President Kaunda. He described it as a "neo-colonialist invention which bears little relevance to socialism", and accused the Zambian Government of indeterminism. He further stated that the Zambian regime was a bureaucratic bourgeois elite, trained by the colonialists, and that they represented "the upper crust of a monstrously inflated, hypertrophied state machine." He went on to recommend certain changes in that government's policy.¹¹³

Considering the press censorship in the Soviet Union, and considering the fact that the author is highly placed in the Soviet Government, it is presumed that such views reflect those of the Soviet Government. If so, such an act constitutes intervention in the political, social and cultural systems of Zambia. Paragraph 4 of the principle of non-intervention grants every state the right to choose its political, social and cultural systems without interference in any form by another state.

This principle accords with the wishes of the African States. In order to fully enjoy the rights granted to all states under the principle of non-intervention, they pronounce their policy to be 'non-alignment' with regard to all blocs.

113. Colin Legum, Zambia on the wrong Road, says Russians. The Observer Foreign News Service. No. 27946, 27 July, 1970.

(Article 3(7) of the O.A.U. Charter). But some of these countries are attracted by certain socialist modes of development but with the emphasis on freedom to pursue these socialist modes of development in their own way.¹¹⁴ This no doubt contradicts Marxist-Leninist principle which insists that

"by over-emphasising the specific features of struggle for socialism in separate countries and ignoring the basic objective laws of socialism, by arbitrarily constructing 'models of socialism' on the national or regional principle, some or other 'model makers' are out to discredit the really existing socialist system in countries where it struck root and is developing successfully, and to present different schemes for the restoration of capitalism under the guise of 'new models'".¹¹⁵

The basic argument of Mr. Kudryatsev is that the Zambian regime is incapable of making a clear choice between whole-hearted socialism, based on the imperative need of waging a class struggle, and temporising with reformist policies which, in his view leave the 'field open to the monopolists and their Zambian collaborators.'

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114. The T.A.N.U. creed of the Tanzanian Government listed one of its principal aims and objectives - "to ensure that this country shall be governed by a democratic socialist government of the people". This socialism differs from the 'really existing socialist system' of the U.S.S.R. which the Soviets claim is now triumphing. A Soviet scholar noted, "Tanzania has practically abandoned the 'African Socialism'. It is almost forgotten in Kenya and Senegal, although it was at one time widespread in these countries and was proclaimed the official ideology in some of them."
A. Kiva - Africa: the National Liberation Movement Today
International Affairs. August 1972.
115. Novoseltsev, I.A. Op. Cit. p. 17.

XXIII. FORMS AND EXTENTS OF INTERVENTION

In the attempt to effect or rather influence changes towards 'the really existing socialist system', the Soviet Union has been accused of intervention in the internal affairs of the African States. In their general practice, neither the African countries nor the Soviet Union give any explanation or definition of an act claimed as constituting intervention. The common terms have been 'inadmissible activities' or 'activities subversives'. Such generalization leave a wide margin of appreciation for a state to determine what type of conduct it considers as intervention. This practice is somewhat confusing; but so is the concept of non-intervention itself.

There has been little agreement as to the special circumstances which, exceptionally may justify intervention. These are mere suggestions and in no way constitute a standard list. Among such circumstances have been

"invitation or consent by the state concerned, threats to the safety of nationals of the intervening state, previous or threatened unlawful intervention by the other state, chronic disregard by a state of its international obligations."¹¹⁶

This list is not exhaustive and it has been suggested that the borderlines between the many customary and tolerated degrees of interference in the affairs of another state, and illegitimate intervention, must always remain fluid, the only proper way out being the strengthening of international co-operative agreements.¹¹⁷

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116. Wolfgang, Friedmann, Oliver Lissityn and R. Pugh. International Law - Cases and Materials. (ST. Paul, Minn. 1969), p. 971.
117. International Law in the 20th Century. (New York, 1969) p. 727.

In numerous instances in which the African States have accused the Soviet Union of intervention in their internal affairs, the following categories of people feature regularly. They are diplomats, journalists and trade representatives of the Soviet Government working in these countries. Apart from these 'officials', there are career spies. The latter are not commonly used in the developing countries which are still technologically and industrially backward. The group above have been accused and deported on charges of activities incompatible with their profession and of other prohibited acts such as those which constitute activities directed towards the violent overthrow of the government of another state.

Professor Baratashvili noted that the concept of non-intervention as formulated in the Declaration may serve as an important legal basis for establishing the fact of direct or indirect intervention in the domestic or foreign affairs of states.¹¹⁸

The principle of non-intervention as stated in the Declaration on the Principles of Friendly Co-operation is mainly connected with the use of force, and tend to refrain from stressing non-violent intervention. While the African States on the attainment of political freedom, and in search of economic stability, establish relations

118. International Law Principles of Peaceful Co-existence, I.A., Op. Cit. p. 27.

with the Soviet Union and other developed countries, they resent the idea of subjugating their freedom to any foreign power, and this precaution has always been applied to the Soviet Union which majority of the African States are aware is most anxious to implant its ideology all over the world, and most conveniently in the developing countries. In order to properly examine the forms and extents of Soviet Union intervention in the African States, we shall cite some cases.

KENYA: In February 1968, the Kenya Government ordered two Russians to leave the country within 48 hours on the allegation that they were working for a hostile intelligence service.¹¹⁹

Veniamin was the representative of the Novosti Agency and Eduard Agadzhanov was in charge of the Nairobi office of Sovexport Film - a Russian film distributing agency. Although the Novosti Board of Agency denied that its agent was connected with a 'hostile agency', the gravity of the offence may be measured by the announcement of the Kenya Government that the offices of both agencies would be closed.¹²⁰

Mr. Daniel Moi, the Home Affairs Minister of the Kenya Government said in a statement later:

"Methods adopted by hostile intelligence services to subvert and undermine governments and to carry their ideological battles into countries which have repeatedly expressed their intention to remain non-aligned are too well known to require repetition."¹²¹

119. Times, 15 February 1968.

120. Ibid.

121. New York Times, 13 April 1969,

Just over a year after this incident, in April 1969, Victor Eliseev, 1st Secretary of the Soviet Embassy in Kenya and another Pravda representative were ordered home by the Kenya Government.¹²² Although no reason was given for the expulsion, (Article 9(1) of the Vienna Convention of 1963 on Diplomatic Relations grants the receiving state the right not to state reason for expelling a diplomat) it was assumed that they had indulged in activities beyond the normal duties of newspaper work and diplomacy.

Perhaps because of the nature of the tasks of Soviet diplomats, and the possibility that they are prone to attract suspicion they are less involved in activities contravening the principle of non-intervention than are journalists.

IVORY-COAST: The Ivory Coast Government announced the establishment of diplomatic relations with the Soviet Union on 31 January 1967, seven years after the attainment of independence.¹²³ Just a little after two years after the establishment of diplomatic relations, the Ivory Coast Government announced on 30 May 1969 the rupture of diplomatic relations with the Soviet Union and ordered all Soviet diplomats to leave the Ivory Coast.¹²⁴ Here again, the Houphouet-Boigny Government did not state any reason for the break, but evidence that the Russian officials were intervening in student strikes was given by M. Phillipe Yace, President of the Ivory Coast Assembly and

122. Ibid.

123. The Ivory Coast became independent on 7 August 1960.

124. Financial Times, 4 June 1969.

the Secretary General of the Government Party, that 'certain foreigners' had led the students into error.

"We deny anyone the right to inculcate our children with doctrines of all kinds in force elsewhere and contrary to the realities here.",

stated M. Yace.¹²⁵

Because of the official silence of the Ivory Coast Government on the reason for the break in diplomatic relations, another stronger reason adduced by observers, and the Soviet reaction to this allegation, tend to confirm the basic cause for the Ivory Coast measures. The Soviet Union, apart from the official government news agency, - TASS (Telegraph Agency of the Soviet Union), maintains what it calls a non-official news agency, NOVOSTI (News in Russian Language). It has been assumed by observers that Novosti is as authoritative as the Tass, and this is supported by the consideration that in a centrally planned political system, all agencies owe strict allegiance to one and the same authority.

Three days after the strike by students in the Ivory Coast, a commentary extremely hostile to the Ivory Coast Government was distributed in Abidjan under the imprint of Novosti.¹²⁶ The Ivory Coast Government no doubt assumed that the Soviet Government intervened improperly in matters entirely within its domestic jurisdiction. A week later, the rupture

125. International Herald Tribune, 31 May 1969.

126. Guardian, 9 July 1969.

of diplomatic relations was announced. Mr. Boris Burkov, chairman of the Novosti Press Agency (A.P.N.) in a statement said that

"The press release was a fake of the crudest kind, ... from the expressions used in the fake press release it is not difficult to determine the circles which produced it. They are circles hostile to the development of friendly relations between African countries and the Soviet Union."¹²⁷

Further, he denied circulating the press release to which the Ivory Coast took exception and stated that had the Ivory Coast Government taken the trouble to check the authenticity of the dispatch,

"This regrettable misunderstanding need never have happened and relations would not have been broken."¹²⁸

It is difficult to ascertain the truth behind this case in view of the strong denial by the A.P.N., but one fact remains - that the Ivory Coast Government regarded the commentary under the Novosti imprint as amounting to intervention in its domestic affairs. The stern action it took as a mark of protest also indicated how strongly it felt about it. Of course, it should be remarked here that in countries with a markedly longer history of independence, such an act of 'intervention' by the Soviet Union would probably not have necessitated a break in diplomatic relations.

127. Soviet News, 8 July 1969.

128. Ibid.

GHANA: Earlier, it was pointed out that there is no consensus yet on what actually constitutes intervention, and that state practice makes the subject more confusing. The case of two Russian trawlers captured in West Ghana in October 1968 by the Ghana Government has been regarded as typically ambiguous with regard to whether the circumstances justified the allegation of intervention.

When Dr. Kwame Nkrumah of Ghana - a favourite of the Soviet Union was deposed as the President of the Ghana Republic, diplomatic relations between the two countries sank to their lowest ebb. The new Government accused the Soviet technicians working in Ghana at that time of fighting alongside troops loyal to the deposed President during the military coup that removed him from power, and as a result sent all of them back home, having as well ordered Soviet financed projects to stop. Such was the climate on October 10 1968 when four Soviet vessels entered the Ghanaian waters at the village of Busua in West Ghana.¹²⁹

Two of the four vessels escaped while the other two - STRM 1243 and the Kholod - were apprehended by a Ghanaian Navy frigate.¹³⁰ Before the two trawlers were boarded by the Ghanaian police, it was alleged that the skippers destroyed their log-books and signal files.¹³¹ The Ghanaian Government alleged

129. International Herald Tribune, 20 February 1969.

130. Ibid.

131. Sunday Times, 23 February 1969.

that the trawlers entered its territorial waters illegally and further, that they were involved in subversive activities. The Ghana Government's allegations were refuted by the Soviet Embassy in Accra which claimed that the detention of its citizens was a violation of international law and demanded their release.¹³²

The Ghana Government detained the captains of the trawlers - Boris Chernokolou and Valentine Petrovich Parhomenko - for over six months before releasing them. They were both fined £80 each for 'intruding in Ghanaian waters'. They later both appeared before a Ghanaian Special Commission investigating an alleged plot to bring back the deposed President. The Commission was told that some of the trawlers' crew were former advisers to Dr. Nkrumah, and that the ships were found by the coast near Nkrumah's tribe villages.

The two captains testifying before the Commission stated that the only contact they made with the villagers was to purchase monkeys and bananas; and flatly denied the allegation of engaging in subversive activities. They were allowed to leave the country in March 1969.

Given wide scope under the principle of non-intervention, the Ghana Government made a general allegation of intervention which (as noted) could not be substantiated juridically.

132. Soviet News, 22 February 1969.

Moreover, that the two Russians were detained so long only to be given such light fines tended to cast doubts on the entire allegation. It is assumed that the situations which the then Ghanaian Government regarded as interventionary, would not have been treated as such under the Nkrumah regime or the present Ghanaian regime.

A similar conclusion appears justified in another case involving a Russian, Mr. G. Potemkin, who was an official of the Russian Trade Mission in Accra. The Ghana Government announced that Mr. Potemkin had been caught engaging in activities incompatible with his status in Ghana.¹³³ He was ordered to leave the country. In such a relatively uncomplicated situation, it may be reasonably assumed that Mr. Potemkin had been doing something other than transacting his ordinary official business. His status doubtless involved commercial activities; but activities exercised beyond the functions normally associated with that status might well fall within what a state considers as intervention in its internal affairs.

CONGO (KINSHASA) NOW ZAIRE.

The same argument holds for the case of six Soviet diplomats who were given 48 hours to leave the Congo. They were accused of having been involved in student demonstrations

133. Daily Telegraph 23 July 1971.

at the University of Kinshasa. A more serious allegation was made by the President of the Republic himself who stated that his action in expelling the diplomats was to crush a plot to kill him and his Government.

"In fact," he stated, "a foreign hand had sought to use the students of Lovanium to achieve its aims."¹³⁴

In Potemkin case and that of the six diplomats above, it could be argued that the principle of non-intervention had been violated by agents of the Soviet Government. The principle categorically forbids any state to organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state.

Soviet diplomats and trade representatives have responsible duties to fulfil in the countries to which they are accredited, and the Soviet Government is definitely answerable and responsible for their behaviour.

XXIV. 'JUSTIFIABLE' INTERVENTION

We agree with the view that the very essence of international politics demands that states should seek to influence the actions of other states in a multitude of ways,¹³⁵ and, as stated earlier, that interdependence of states forged through different forms of co-operation makes this inevitable, but such influence should not include elements which are coercive or antagonistic to the other state.

134. Times, 30 July 1971.

135. International Law in the 20th Century. Op. Cit. p. 726.

The foregoing observations have been confined to political intervention. First this is possibly more readily detectable than other patterns of intervention. Secondly, all other forms are directly or indirectly politically motivated: economic and technical aid, trade, technical assistance, military aid, cultural exchanges and the like are all differing forms and extents of intervention in the internal affairs of other states.

Raymond L. Garthoff of the U.S. State Department emphasised that

"attempts to affect policy in minor ways were just as much intervention as the violent overthrow of a government," and suggested that it was necessary to consider internal and external, overt and covert, direct and indirect methods.¹³⁶

All of these were generalised in the Declaration on the Principles of Friendly Relations. The principle of non-intervention reiterated the fact that any form of interference directed against the economic elements of a state are in violation of international law. However, the view has been stated that because rich, powerful countries exist, they inevitably 'intervene' in the economic affairs of the poorer countries.¹³⁷ Whatever the truth of this, it should be noted that the African States are deeply determined to develop their respective economies (which are relatively poor) but at the same time to adhere to their non-aligned policy.

136. A.J.I.L., 63, (1969), p. 309.

137. Ibid, p. 307.

Inevitably, these two aspirations often conflict, since an increase in Soviet aid to facilitate the economy of a particular African state, limits that state's autonomy in various respects. But then, should these poor countries discard Soviet aid because somehow it disrupts, influences or intervenes in their normal course of development? Moral issues are involved in this situation rather than legal.

The United Nations, through such organs as the UNCTAD and others connected with economic development and growth has initiated several economic policies aimed at regulating economic relations especially between the poor and the rich nations of the world.¹³⁸ But it should be pointed out that very little has been achieved in this field if only because conditions on foreign aid to legally sovereign countries cannot at this stage of world development be made subject to appropriate legal regulation, remedies and sanctions,¹³⁹ since without the consent of states concerned, international organs are often incompetent of giving authoritative interpretation of international law.

In light of the inevitability of influence by the developing^{ed} countries on the developing countries, Mr. Endalkachew Makonnen, the Permanent Representative of Ethiopia to the United Nations suggested that

138. This particular point is discussed below in the chapter on Economic co-operation.

139. A.J.I.L., 63, (1969), p. 310.

"Modernizing states should try to insure their domestic stability, work together for better conditions and terms, and use the balance between the major powers as a necessary deterrent against domination by one side or the other."¹⁴⁰

In the absence of a clearly formulated and well defined principle of non-intervention, the loose standard available in the form of the duty not to intervene in matters within the domestic jurisdiction of any state, in accordance with the Charter, has served in some ways to regulate and check the forms of co-operation between the Soviet Union and the African States if only because, at least they both claim to have respect for the Charter and its principles. For instance, in the annals of co-operation between both sides, there have been changes in leadership and governments. These changes have not drastically affected co-operation, although a leftist take over in an African State is appraised by the Soviet leaders as a victory for socialism.

In 1965 however, after the overthrow of Ben Bella, an arch supporter of Soviet policies, the Soviet Government at first refused to comment on the new regime - a diplomatic expression of non-intervention in Algerian policies.

Allegations made by foreign press organs that certain political figures opposed to the new Algerian regime were hiding at the Soviet Embassy was denied by the Soviet Embassy as

"a crude fabrication with deliberate provocative aims"¹⁴¹

140. Ibid, p. 311

141. S.N., 23 July, 1965.

Mr. Alexei Kosygin the new Premier of the Soviet Union in a message of July 14 1965 to the new regime expressed the conviction that the fraternal friendly relations between the two countries would be further developed in a comprehensive way.¹⁴² When Colonel Boumedienne, the new Algerian leader, paid a visit to Moscow five months later, both the Soviet Government and the newspapers made no reference to the departed Ben Bella who had been made a hero of the Soviet Union during his days in power in Algeria.

Likewise, at the removal of Nikita Kruschchev as the Prime Minister of the Soviet Union, in 1965, most African States felt it was an internal affair of the Soviet Union and refrained from comment.

All these depict restraints on both sides not to intervene in matters exclusively within the domestic jurisdiction of other states.

XXV. OTHER PRINCIPLES

The remaining principles of the United Nations Declaration on Friendly Co-operation have very little to offer; and in fact at the present stage in the development of co-operation between the Soviet Union and the African States, they are not as positively useful as the other principles enumerated.

142. Ibid.

Both principles - (a) that states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, and (b) that States shall settle their international disputes by peaceful means - are specially formulated to regulate and normalize tension created by the big powers rather than designed to regulate relations between a weak nation and a strong one. Furthermore, the elements involved in most of the remaining principles have been dealt with to a greater or lesser extent in the other principles, since they are all interrelated and the interpretation of one principle should be carried out only in the context of the others.

Principle (a) above forbids the use of force against the territorial integrity of other states. During the debate on the principle, the Soviet Union, the developing countries and other socialist countries tried in vain to establish the logical extent of the term force to cover economic, political and other forms of coercion falling short of 'armed' force. They contended that non-armed pressure such as complete or political interruption of economic relations were often more effective than armed force.¹⁴³

143. Mr. Dadzie (Ghana), Doc. A/AC. 119/SR. 5, p. 17.
Mr. Khalil (U.A.R.), Doc. A/AC. 119/SR. 5, p. 9.
Dr. Pechota (Czechoslovakia), Doc. A/AC. 119/SR. 5, p. 6.

In the history of co-operation between the Soviet Union and the African States, this principle has not been cited as specifically or as regularly as other principles. However, paragraph 9 of the principle which forbids the use of force proclaims:

"Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force."

There have been very few cases indeed of allegations of guerillas being trained in the Soviet Union to topple governments in Africa, and these have been made mainly by the Governments of South Africa, Rhodesia and the Portuguese colonies. The Soviet Union's open support for the overthrow of these governments has never been hidden, and in fact the talk on the formation of an 'African High Command' to fight these regimes has the support of the Soviet Union.

One of the few cases that could be cited as contravening the above principle was in Kenya. A member of the now banned Kenya opposition party stated at a press conference organised by the Kenya Ministry of Information in April 1970 that the Soviet Union and China between 1967/69 gave the opposition party the sum of £55,000 to promote militant activities.¹⁴⁴ Such an

144. The Guardian, 3 April 1970.

accusation if true, undoubtedly contravenes the above principle.

It was established that there was use of force against the territorial integrity of Guinea in November 1970 by Portugal. At the Security Council debate of 5 December 1970, Mr. Malik, the Soviet representative proposed measures against Portugal including complete rupture of economic relations and the discontinuation of rail, sea, air, postal telegraph and other types of communications as well as the breaking off of diplomatic relations. If those measures failed he continued, and Portugal continued its aggression against the African States, the need would arise to adopt the measures provided for by Article 42 of the United Nations Charter, namely, blockade and other operations by the air, naval and land forces of the United Nations' Member Nations.

The stern Soviet attitude and support for Guinea was no surprise judging from its general approach to the principle when violated by other States against the African States or the developing countries in general - after all, it claims for itself the title of champion of the cause of the oppressed peoples of the world.

The other principle that states shall settle their disputes by peaceful means has not so far been practically tested in the co-operation between the Soviet Union and the African States, since there has been no cause for this except in economic co-operation where agreement stipulates that any dispute arising from any commercial transactions between the two would have to be resolved by a special commission comprising representatives

of both sides. Both the Soviet Union and the African States are generally reluctant to utilize the International Court of Justice for settlement of their disputes.¹⁴⁵

The real basis for international co-operation between States in conformity with our negative principles are clearly expressed in the United Nations Declaration on the Duty of States to Co-operate with one another in accordance with the Charter. All the remaining six principles of International Law concerning Friendly Co-operation are embodied in this principle, and both sides in the African-Soviet relationship have stated the need to co-operate strictly on this principle, and it is a fact that conflict arises when one party in the co-operation accuses another of contravening the principles as stated above.

XXVI. NEW PRINCIPLES.

It will have been observed during the discussion of the principles of international law that although a codification of the Principles of International Law on Friendly Co-operation was achieved, members of the United Nations are still not agreed in entirety on the elements enumerated in these principles.¹⁴⁶

145. The reasons for this situation are given in Chapter V of this work.

146. See, Report of the Special Committee on the Principles. G.A.O/R. 24th session, suppl. no. 19 (A/7619); also, see Professor McWhinney's thorough analysis of the details involving codification of these principles. A.J.I.L. 60 (1966), pp. 1-34, and Piet-Hein Houben, Principles of International Law Concerning Friendly Relations and Co-operation among States, A.J.I.L. 61 (1967), pp. 703-736.

Furthermore, there is no uniformity in their application by member states of the United Nations in co-operation with each other. The Soviet Union however claims full application of these principles in its co-operation with other countries and bitterly accused the Western capitalist countries of violating them, as did Professor Baratashvili who stated in an article;

"Today, with the ceaseless violations of these principles by the forces of imperialism, colonialism and neo-colonialism, efforts to establish the content of the basic principles of international law are exceptionally important."¹⁴⁷

Apart from the claim of effective application of these principles, a new conception is gradually developing in Soviet writings and theories. According to Professor Tunkin,

"Today, when the authority of the world socialist system and the newly independent states is growing steadily and the forces of peace are becoming ever stronger, there is every reason to believe that the basic principles and rules of international law will be further developed and strengthened, and that new principles and rules, directed at promoting international co-operation...on the basis of equality, respect of sovereignty and non-interference will be established."¹⁴⁸

It is claimed by Soviet International Lawyers and theorists that apart from the generally accepted principles of international law, there is another group of New Principles which have developed or are being developed during co-operation

147. International Affairs, (Moscow, February 1972), Op. Cit. p. 22.

148. Contemporary International Law. Edit. Tunkin, (Moscow, 1969), p. 35.

between the Soviet Union and other Socialist States on one hand, and the Socialist States and the developing States on the other. This theory was explained by Professor Aleskerov of Azerbaijan University in the synopsis of his thesis in 1967 when he asserted that the principles on which agreements between the Soviet Union and the newly developing states are based, could be divided into two categories: (i) General Democratic Principles which regulate mutual relations among states of the world; (ii) New Principles which were formed or are being formed in the process of co-operation of the U.S.S.R. and other socialist countries with the developing countries.¹⁴⁹

149. Synopsis of thesis. (Baku, 1967), p. 13; In a personal discussion with Professor Aleskerov during the Annual Conference of Soviet Association of International Law in Moscow in February 1972, the author asked the Professor what differences exist in the 'new' and universal principles as generally accepted by States and further inquired whether this type of division does not amount to duplication since the 'new' principles are contained in the 'old'. Professor Aleskerov explained that this could not possibly be so, and that it was because of the general consensus needed by the members of the Special Committee (which drafted the said principles) to get through certain progressive aspects of the generally accepted principles, a certain number of progressive elements had to be abandoned as compromise by the Soviet Union and the Socialist States. But because the Soviet Union considers these elements as very essential to the development of co-operation with the developing countries, it has to specifically develop them in co-operation with them.

The major components of these new principles are strategically formulated as to appease the African States, and indeed some of these now constitute what has been referred to as 'The system of legal principles of peaceful co-existence'.¹⁵⁰ They include the principles of (a) Liquidation of colonialism or anti-colonialism, (b) Neutralism and non-alignment, (c) Maintenance of inviolability of permanent neutralised States, (d) Mutual benefits, (e) International aid, friendship and effective co-operation.¹⁵¹

According to Soviet writers, the Soviet Union and other countries of the socialist community have introduced an absolutely new element in international relations, and, since the second world war an important role in the development of international law has been played by the states which have emerged as a result of the liberation of colonies and semi-colonies. The influence of these joint forces continues the argument,

"have first and foremost wrought substantial changes in the basic principles of international law, which actually determine its nature. As a result, many reactionary principles have vanished, new important progressive principles have appeared, and old democratic principles have been further developed."¹⁵²

150. Kurs Mezhdunarodnovo Pravo, Moscow, 1972, Op. Cit. p. 41.

151. Ibid. pp. 41-51; Aleskerov, Op. Cit. p. 15.

152. Contemporary International Law, ed. Tunkin, Op. Cit. p. 26.

The new principles are nevertheless in substance repetitions of the established principles which, it is believed, achieve the same objectives if properly applied. For instance, the new principle on liquidation of colonialism could as conveniently be subsumed under the established principle of self-determination of peoples. The United Nations Declaration on Principles of Co-operation stated on self-determination the United Nations' responsibilities

"To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned."¹⁵³

The floor of the General Assembly has witnessed scores of resolutions on liquidation of colonialism since over two decades ago.¹⁵⁴

The new principle of liquidation of colonialism or anti-colonialism as being referred to in the recent Treatise on International Law, has nothing new to add, and is merely repetitive of the elements contained in the principle of self-determination.¹⁵⁵ Soviet jurists agree that, though the

153. G.A.O/R. XXV Session, suppl. No. 28 (A/8028), p. 124.

154. Resolution 1514 (XV); Resolution 2105 (XX); Resolution 2189 (XXI), etc.

155. See Treatise on International Law, 1972, Op. Cit. p. 42, and compare the elements enumerated under the principle of anti-colonialism with those under the principle of self-determination as contained in the Declaration.

principle of liquidation of colonialism has very much in common with the realization of the principle of self-determination, nevertheless there are certain specific elements which give it the characteristics of an independent principle.¹⁵⁶ According to this argument, both concepts appeared at different periods; and while the principle of self-determination appeared earlier, the second one arose as a result of the development of National Liberation Movements. It is further argued that whilst the first principle mainly guarantees the rights of every nation to self-determination and the establishment of its own state, the main responsibility of the principle of liquidation of colonialism falls on the United Nations and the Member States of that Organization.¹⁵⁷

Both arguments are academically weak in that the time factor could not have played any significant role in the formation of the new principle; and even if so, since the principle of self-determination appeared before the new principle of liquidation of colonialism, it would have been more appropriate to add whatever new elements are contained in the new principle to the older one since their basic objectives are the same. Moreover, the principle of self-determination as contained in the Declaration makes it the duty of each Member

156. Aleskerov, Op. Cit., p. 15.

157. Ibid., p. 16.

State to co-operate with the Organization in realising the responsibilities entrusted to it by the Charter regarding the implementation of the elements of the principle of self-determination, one of which is liquidation of colonialism. Therefore, the implementation of both the established principle and the 'new' Soviet principle form part of the same task.

XXVII. NON-ALIGNMENT (NEUTRALISM)

The Soviet new principle of neutralism is an African concept. Article 3(7) of the Charter of the Organization of African Unity declared the affirmation of a policy of non-alignment with regard to all blocs. The Soviet argument states that as a result of international relations based on the policy, a new principle appeared which could be named international legal principle of neutralism.¹⁵⁸ Further, the declaration of this principle by the Organization of African Unity Charter is enough evidence of its legal content in international agreements stated the Soviet argument, and its recognition by the Soviet Union has been expressed by the various communiques with African leaders.

The Soviet concept distinguishes between traditional permanent neutrality as pursued by some European States,¹⁵⁹

158. Ibid., p. 1.

159. Permanent neutrality as pursued by States such as Belgium, Switzerland and Austria is the neutrality of States which are neutralised by treaties; see in particular - Oppenheim, Op. Cit. p. 661.

and neutralism (non-alignment) as pursued by the African States and the developing countries. It argues the inviolability of neutralized states,¹⁶⁰ and adds;

"Since its emergence, the neutralism of the young states essentially differed from the policy of traditional neutrality pursued by some European bourgeois states ... By virtue of the very logic of the struggle for political and economic independence waged by the young states, neutralism assumed an increasingly sharper anti-imperialist form."¹⁶¹

However, Soviet writers note that the activities of many young states lack consistency. They see the foreign policy pursued by the countries with socialist orientation as most consistent, whereas,

"The neutralism of some countries is rather relative. In using neutrality as a cover and taking part in the forum of the non-aligned states, these countries cooperate with neo-colonial forces, or racial and colonial regimes in African countries and, as a matter of fact, follow a pro-imperialist foreign policy line ... Certain young states take an anti-imperialist stand on some issues while succumbing to imperialist pressures on others."¹⁶²

This Soviet view can be summed up in the comment of Mr. Hal that when forces who are in the ranks of the opposition to imperialism move to a position of non-alignment, such movement becomes a victory for imperialism.¹⁶³

160. Treatise on International Law, Moscow, 1972, Op. Cit. p. 48

161. A. Kiva, The role of the Young National States in International Relations. International Affairs, Moscow, Vol. 3, 1973, p. 70.

162. Ibid. pp. 72-73.

163. Gus Hall, Imperialism Today. (New York, 1972) p. 329.

While it may be agreed that this new principle should receive more attention, the fact remains that most of the elements of the principle of sovereignty cover a large aspect of the concept of non-alignment in its politico/legal context. The principle of Sovereign equality allows each state free right to choose its own political and economic systems without interference from any source. A policy of non-alignment as declared by the African States is inherent in the exercise of the principle of Sovereign equality.

XXVIII. INTERNATIONAL AID, FRIENDSHIP AND EFFECTIVE CO-OPERATION

The Soviet theory on the principle of international aid claims that this principle ascertains the moral and political responsibility of the Soviet Union and other Socialist countries to give aid to the poor, developing nations on the basis of the principle of International Proletarianism.

XXIX. OBJECTIVES OF THE NEW PRINCIPLES

Soviet legal theorists have analysed the main objectives of the new principles as the creation of an effective impact on the development of sovereignty of the developing nations in general, and help further to solidify co-operation between the developing countries and the Soviet Union. It is claimed that the importance of the new principles can be noted in the fact that they have created agreements between the Soviet Union and the developing States which constitute models for international co-operation, in contrast to the unequal treaties contracted by the Capitalist States and the African States.¹⁶⁴

164. Aleskerov, Op. Cit. p. 18.

However, Soviet scholars' struggles to establish 'new principles' of co-operation with the developing countries in general, in the view of the writer, must be seen as the strenuous attempt by them to apply the basic principles of Soviet Foreign Policy to the science of international law. There are three basic principles of Soviet foreign policy - namely; Peaceful co-existence, Socialist internationalism and Proletarian Internationalism. Each is directed towards the maintenance of specific relationships.

Thus, the first regulates the relationship of the Soviet Union with the Capitalist States (this policy dictates the rapprochement with the 'imperialist State' of America). Concretely, it regulates relationship between states of the two conflicting ideologies - capitalism and socialism, hence the long standing efforts of the Soviet Union to introduce the concept of peaceful co-existence into international law. The second principle - socialist internationalism regulates the relationship with the states of the 'peoples democracies' of the Socialist Commonwealth, and the third principle of proletarian internationalism regulates Soviet relationship with workers of the world and 'progressive' elements outside the above two groups.

It is difficult to ascertain where the African States fall into of the three groups above for, while the Soviets would want to classify them into the last group, the ideology of some of them is more capitalistic than that of some developed

capitalist States of the West. However, because the Soviets consider it essential to establish 'new principles' of co-operation with the developing states and do not apply the principles employed in co-operation with the capitalist states and the socialist states, it may be assumed that the African States are generally, though erroneously grouped under the third. It is in fulfilment of the policy regarding the principle of proletarian internationalism, that the 'new principles' are established.

Finally, nations can better co-operate if they so desire, by following the established principles of international law. These principles are not rigid, and it is suggested that the Soviet new principles can be incorporated only in those places where ambiguity can be avoided. Indeed, State practice is a testimony to the fact that it is not so much the techniques of international law which are deficient, but rather the state of the political relations, reflected in the fact that states preach one principle, but practice something different.

CHAPTER TWODIPLOMATIC RELATIONS BETWEEN THE SOVIET UNION AND THE AFRICAN STATES.I. PRE-INDEPENDENCE PERIOD

The genesis of diplomatic relations between the African States and the Soviet Union can be traced to the late 1950's.¹ This can be explained by the fact that at the beginning of the fifties, majority of the African countries were still colonies. As colonies, they had no diplomatic staff, and there was nothing like African diplomacy as we now know it even at its present immature stage of development. However, before the advent of

1. Pre October Revolution in Russia, during Peter I reign in Russia a number of direct contacts with Africa were established. It has been stated that during this period, an attempt was made to bring about closer relations between Russia and Ethiopia. The Alexandrian Patriarch Cosmos II was responsible for such closer relations with Ethiopia during the period 1710-1712 and 1723-1737. In Soviet-African historical relations, the traditional ties between the Russian Orthodox and the Alexandrian Church constituted one of the earliest forms of contacts. During the reign of Catherine II measures were taken to establish trade relations with Africa and according to a decree to the Senate of 18 November 1784, Russian diplomacy was requested to "try to establish commerce with Jaffa, Alexandria and Egypt". S.L. Milyavskaya - Information about Africa in 18th Century Russia. (Paper presented at the 1965 Moscow Conference on the Historical Relations of the Peoples of the Soviet Union and Africa) as in Russia and Africa, Africa Institute, (Moscow, 1966), pp. 42-43. In view of this long standing relation between the Soviet Union and the already independent states of Africa, it is of interest to note that nothing much could be said of the diplomatic relations between the Soviet Union and the few independent states of Africa after the October Revolution. Ethiopia only established diplomatic relations with the Soviet Union on 21 April 1943, and indeed, Liberia only recently established formal diplomatic relations with the Soviet Union. The Soviet Government was apparently preoccupied with its internal development between the period 1917-1950, and though there were very few independent African States at this period namely Ethiopia, Liberia and Egypt, relations were not well developed. We have therefore decided to concentrate on the period when the majority of the African states started to attain their independence.

colonialism, there were peculiarities in the diplomatic practices of the African countries not unlike those in the early Greek City-States.²

In the Colonial period, diplomacy as practised and understood by the colonial powers prevailed in these countries until the eve of their independence. The pre-independence era which brought vigorous negotiations between the colonies and the colonial powers introduced the African countries to certain practices in diplomacy as traditionally accepted.³

II. POST-INDEPENDENCE PERIOD

On the attainment of independence, the majority of the African countries had no diplomatic staff, and of these countries the Nigerian example is hardly representative of the new states of Africa. When Nigeria became independent in October 1960, it had 56 diplomatic officers.⁴ This is a very large number in the African context. In fact before 1956, the Federal Government of Nigeria had established a type of pseudo-diplomatic service by having Nigerian representatives in certain key capitals within the framework of the British Diplomatic Service. It has a student liaison officer in Washington to look after the welfare of the

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2. See on early African diplomatic practice T.O. Elias, African Law as in Sovereignty Within the Law. Larson, Jenks and others, (London 1965,) pp. 218-221.
 3. These were their first exposures to the modern skills and techniques of diplomacy.
 4. J.A. Ogunkeye, Papers presented at Seminar on Diplomatic Practice and Procedure at L.S.E. (London, 1965).

Nigerian students and to make arrangements for Nigerian Ministers visiting the United States. In London, there was the Commission for Nigeria at Nigeria House, as well as Regional Commissions which had no formal diplomatic functions, but were merely concerned with students' welfare, the improvement of trade relations and general publicity for Nigeria in the United Kingdom. Although not independent and therefore not yet a member of the United Nations, it had an observer at the Trusteeship Council meeting of the United Nations to advise on British Cameroon affairs.

In 1958, the Nigerian External Affairs division of the Prime Minister's office was created to deal with matters like issuing passports and visas and maintaining relations with the consular representatives of foreign countries resident in Lagos.

As stated above, the case of Nigeria was one of the very few exceptions to the general rule. The majority of the African countries after independence had no trained men and women to fill their external missions. In certain cases, these countries had to be helped by the Nigerian Government to train their prospective diplomats.⁵

Before 1957, Soviet-African diplomatic relations were not possible. As colonies, the African countries could not legally establish diplomatic relations with the Soviet Union or any other sovereign country.

5. Ibid.

III. PROCEDURES FOR ESTABLISHING DIPLOMATIC RELATIONS

There are several stages in the development of Soviet-African diplomatic relations. The Soviet authors recognize three methods of the establishment of new states as subjects of international law:

- (a) the formation of new states as a result of social revolutions.
- (b) the formation of states in the course of national liberation struggles.
- (c) the formation of new states as the result of the merger of two or more states, or the breaking up of one state into different states.

The historical development of the African countries has witnessed all three forms, but the second is more appropriate and common to them though it should be remarked that the transfer of power from the colonial master to the colonies in the majority of cases was peaceful and cordial.

IV. RECOGNITION OF THE AFRICAN STATES.

One of the main problems concerning the legal effects of recognition is the confusion between recognition properly so called and the establishment of diplomatic relations. Whereas the latter always implies recognition, the former is not always followed by the establishment of diplomatic relations.

Recognition according to Soviet jurists is a legal act by which a State or group of States may declare the character and scope of their relations with the government of a new State as an

international person.

"It is in the establishment of diplomatic relations which facilitate co-operation between States, that the practical meaning of recognition above all consists."⁶

In state practice, there are two main forms of recognition. There is the formal recognition which a government may make without establishing diplomatic relations, and secondly, recognition may be implied from the mere fact of establishing diplomatic relations.

In Soviet-African relations, though recognition is of legal and political value to the African States, as will be seen, it has not been a catalyst for establishing diplomatic relations with the Soviet Union.

The motives behind recognition of one state by another vary. On the attainment by an African State of independence, the Soviet Union had always been among the first to recognize it. In the recognition practice of the Soviet Union towards the African States, recognition quickly follows official announcement of the independence date of these countries. In a speech in Moscow on 17 July 1961, President Abboud of Sudan remarked;

"The Soviet Union was also among the first to recognize the independence of the Sudan and to support its admission to the U.N.O."⁷

Cameroon became independent on 1 January 1960, and in a telegram of the Soviet Government of 31 December 1959 to

6. Academy of Sciences of the USSR. Institute of Law, International Law. (Moscow, No Date) p. 117.

7. Sunday Times, 18 July 1961.

Mr. A. Ahidjo who was the head of the Cameroon Government, the Soviet Union stated it was recognizing Cameroon as an independent and Sovereign Country and expressed the desire to establish with it, diplomatic relations.⁸ Recognition is the essential procedure of political, commercial, cultural and other relations between states. In the Soviet Union-African practice, a declaration by the Soviet Government to recognize the independence of an African State is always accompanied by a declaration of intention to establish with it diplomatic relations.

This is mainly done by sending a note or telegram. Sudan became independent on 1 January 1956 and in a telegram dated 3 January 1956, addressed to the Prime Minister of the Sudan, the Soviet Government stated that, guided by the high principle of self-determination, it was recognizing the Sudan as an independent and sovereign state; and it also expressed the desire to establish diplomatic relations with the new Government.⁹ In a reply two days later, the Sudan Government stated that it was grateful for the recognition and accepted the proposal for the establishment of diplomatic relations.¹⁰

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8. SSSR i Strani Afriki (1946-1962) USSR and the African Countries. (Moscow, 1963), p. 523.
9. SSSR i Strani Afriki (1946-62) USSR and the African Countries. (Moscow, 1963), p. 321.
10. Ibid.

It should be noted that official recognition by the Soviet Union and the declared intention to establish diplomatic relations with an African State does not confirm the establishment of such relationship. The African States have often been somewhat slow and have failed to give an immediate response to the practical aspect of diplomatic relations. Although Ghana and the Soviet Union decided to establish diplomatic relations shortly after the former's independence, it was over a year before both countries eventually maintained diplomatic staff in their respective capitals.¹¹ The delay was that of the Ghana Government.

A more interesting case involved one of the oldest independent states of Africa, Liberia. Liberia is older than the Soviet Union. It became a Sovereign State in the 19th century, whereas the Soviet Union became a Government only after the October Revolution of 1917. Both countries established diplomatic relations in 1964;¹² but they did not

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11. Diplomatika Novoi Afriki. V.A. Brikin, Diplomacy of New Africa, (Moscow, 1970), p. 7; Also, although the Soviet Union recognized and expressed the desire to establish diplomatic relations with Cameroon on the eve of the latter's independence in January 1960, formal diplomatic relations were established in March 1964.
12. West Africa, 23 June 1972, p. 807. Indeed, discussions on the establishment of diplomatic relations between the two sides started as early as 1956. See, Pravda, 20 January 1956.

exchange diplomatic representatives. In an agreement following talks between the Liberian Acting Foreign Minister Mr. F. Okai and the Soviet Ambassador to Ghana Mr. I.F. Filipov, both sides agreed to open Embassies in their respective capitals in July 1972, eight years after the official establishment of diplomatic relations.¹³

The Government of Nigeria, although independent since 1960 and had in receipt of a request from the Soviet Union to establish diplomatic relations in the same year, granted permission to the Soviet Government to establish its diplomatic mission in Lagos only in 1961. The Nigerian Embassy in Moscow was established in 1963. The then Governor General of Nigeria, Dr. Nnamdi Azikiwe, commenting on the decision stated:

"Russia has an Embassy in Britain and that does not mean Britain is Communist. As a new independent State we are not concerned with the attitudes and opinions of world powers to each other. Russia was West allies and the Germans enemies, now the Russians are supposed to be our enemies and the Germans our allies.¹⁴ We cannot afford to antagonize any of the great powers."

The general attitude of reluctance on the part of the newly independent states is clearly reflected in the Afro-Malagasy Union formed in 1960. The Union consisted principally of the former French African colonies and recommended its members from the individual establishment of diplomatic relations

13. West Africa, 23 June 1972, p. 807.

14. Johannesburg Star, 9 March 1961.

with the Soviet Union. Indeed, of all the countries belonging to the Union, only Guinea (1958) and Mali (1960) after independence immediately established diplomatic relations with the Soviet Union.¹⁵

The reason for the general reluctance of the African States to establish diplomatic relations with the Soviet Union, according to a Soviet lawyer, is that although these African countries are de iure independent, in fact the former colonial powers continue to maintain key positions in their respective governments and administration.¹⁶ He noted that

"Telephone and telegraphic communications of these African countries with other parts of the world pass through London and Paris and are controlled by the English and French authorities ... and finally, their foreign ministries are mainly staffed by Europeans."¹⁷

Without necessarily refuting these allegations, it may be asserted that there are other factors influencing the African States' attitudes. The continuous influence of the former colonial powers is no doubt one of the factors.

However, it should also be noted that very little was known about the Soviet Union in Africa before (and sometimes after) independence. The reason was that the Soviet Government, until after the death of Stalin, had not come out of its self-isolation from the rest of the world. Its citizens are not free to travel out

15. V.A. Brikin, Op. Cit. p. 7.

16. Ibid.

17. Ibid.

and make individual expeditions like their fellow Europeans in the West. The very little known about the Soviet Union in Africa has been clouded by biased propaganda by the Western countries. In addition, the African States have insufficient diplomatic staff and tended therefore to give particular attention to their former masters. Further, the high costs of maintaining Embassies in major countries of the world was a practical impossibility for these new states because of their financial weakness.

To fail to take all of these factors into consideration would represent an unrealistic approach to the reasons for the reluctance of the African States to establish diplomatic relations with the Soviet Union. Diplomatic relations between the Soviet Union and the African States, despite their initial difficulties from the late fifties up to the middle of the sixties, rapidly developed towards the end of the sixties. At the beginning of 1970, 34 African States had diplomatic relations with the Soviet Union.¹⁸ This was clearly a considerable improvement bearing in mind the periods of tension caused by the clash of Soviet ideological aspirations with African nationalism.

18. Afrika v. Mezhdunarodnik Atnosheniya. Africa in International Relations, edit. A. Gromiko, Moscow, 1970, p.6.

V. SOVIET-AFRICAN DIPLOMATIC PRACTICE

Following the General Assembly resolution of 1952, the Vienna Conference was convened in 1961 at which problems of diplomatic relations were examined. The outcome of the conference was the formulation of the principles of diplomatic relations contained in the Vienna Convention of 1961. Soviet-African diplomatic relations are based on the concepts of the Vienna Convention. Apart from that instrument, both sides have local legislation affecting the rights of diplomats serving in each other's country. An example is the Statute of May 23 1966 on 'Diplomatic and Consular Missions of Foreign States on the Territory of the U.S.S.R.' The Soviet Government claims that by that statute, the scope of privileges and immunities granted to foreign missions may be broadened by international agreements with other countries on a reciprocal basis.

In some of the African countries, the Governments enact special acts regulating specific matters. An example is the Act of the Government of Nigeria stating that the Government will sell a piece of land to any Foreign mission to build an embassy on the understanding that such privilege will be equally granted in those countries enjoying the privilege.

As a matter of fact, both the Soviet Union and the African states regulate their diplomatic relations according to the concepts of international law, and the principles of reciprocity and equality. Subsequently, because of lack of communication between Moscow and the various African capitals, negotiations on the establishment of diplomatic relations are undertaken by

the Permanent Representatives of these countries at the United Nations. Finally, through the exchange of diplomatic notes, agreement is reached, and the decision is simultaneously announced by both governments or a joint communique is issued. This is in broad conformity with Article 2 of the Vienna Convention which states that the establishment of diplomatic relations between states, and of permanent diplomatic missions, takes place by mutual consent. Although the Federal Government of Nigeria eventually agreed to establish diplomatic relations with the Soviet Union,¹⁹ its Prime Minister stated that his country would not be bullied by Soviet demands into opening up an Embassy in Lagos as a matter of urgency and that applications would be considered in the light of the interests of Nigeria. This in itself, is an affirmation that practice of establishing diplomatic relations should not be an expression of one side but both sides.

Article 11 of the Vienna Convention reserves the right of the receiving state to require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving state and to the needs of the particular mission. Paragraph 2 of this Article also allows the receiving state to refuse to accept officials of a particular category. In

19. See chapter 1 above.

the early stage of diplomatic relations between the Soviet Union and the African States, the latter often limited the size of the Soviet Union Missions to a fairly small number. For example, the Nigerian Government allowed the Soviet Embassy in Lagos a staff of ten at the beginning of diplomatic relations,²⁰ though the United States had triple that number.

It would be wrong however, to assume that this act was discriminatory. There are many factors which dictate the size of a mission. Trade and economic activities can sometimes influence diplomatic relations, and this had been so in the Nigerian case. A U.S. State Department Report on Soviet aid to developing countries from 1954 to 1967 showed that \$858 million had been given to Africa, of which Nigeria received nothing.²¹ Soviet-Nigeria trade which was virtually negligible in 1966, amounted to 31.2 million roubles in 1970, a six-fold increase over 1966.²²

As a result of growing contacts between the two countries, the Soviet Embassy in Lagos increased its staff with the permission of the Nigerian Government to 14.²³ Earlier, the Nigerian Government had permitted the Soviet Government to send

20. Johannesburg Star, 9 March 1961.

21. N.Y.T., 21 January 1970.

22. S.N., 6 November, 1971.

23. N.Y.T., 9 March 1969.

a Military Attache to Lagos, a privilege previously enjoyed before 1968 only by the British and American Missions.²⁴ At present, after a hesitant start to diplomatic relations between these two countries, an excellent atmosphere prevails in terms of diplomatic relations.

The appointment of a Head of Mission - an Ambassador to the Head of State, and in the case of a Charge d'Affaires to the Minister of Foreign Affairs - must receive the prior approval of the receiving state. It is appropriate in diplomatic practice for the sending state to find out if the proposed appointment is satisfactory to the receiving state before an announcement is made. Article 4(2) of the Vienna Convention states that the receiving state is not obliged to give reasons for the sending state for a refusal of agreement. In Soviet-African diplomatic relations, this custom is observed and there has been no instance so far where either party has refused to accept a nominated head of mission.

It is the customary rule in diplomatic practice that until an Ambassador presents his credentials to the Head of State, he is not officially recognized. The growing practice followed by some African Missions in the Soviet Union is that, at the ceremony marking the presentation of his credentials by a head of mission, the entire African personnel accompanies the head of mission. In ordinary circumstances, the head of mission would normally be accompanied by the members of the diplomatic staff of the mission and by them only.

24. Ibid.

This is not a hard and fast rule or an invariable practice; and a further reason for such particular protocol by the African Embassies is that they are relatively small compared with countries such as U.S.A., Britain, France and Italy each of whose diplomatic staff numbers not less than 30 with the entire personnel often amounting to over 100. The ceremony at the presentation of letters of credence is typified by the exchange of goodwill, a review of the extent of relations in the past and, if there are pledges - the Soviet Government usually pledges to help develop the economy of the African country concerned - these are stated. It is standard practice for the Head of Mission to read his address first, after which the Head of the receiving State replies.

The African Embassies in the Soviet Union make use of either French or English as the official language, and until recently most African diplomats could not speak Russian. The Foreign Ministry in Moscow furnishes a Russian interpreter who speaks either English or French. The interpreter who is not fluent functions as a linguistic intermediary between the Soviet Government officials and the African diplomats. On one occasion a Russian interpreter during a meeting between officials from the Ministry of Higher Education in Moscow and the Nigerian Embassy there distorted a statement made by the Minister to the Nigerian officials. A Russian official in the Ministry

who had earlier pretended not to understand English, promptly corrected the interpreter giving an accurate interpretation to the bewilderment of the Nigerian officials.

Unlike their counterparts in the African Embassies in the Soviet Union, the Soviet diplomats sent out to Embassies in Africa conduct their activities in the lingua franca of the host state. Even in certain cases, a good number of the staff speak the local dialects of these countries thereby being privileged to consult with the local population. This practice is being gradually developed by the African countries. At present, the Embassies of Kenya, Ghana, Tanzania, Nigeria, Egypt and Sierra Leone to mention a few have African diplomats who graduated in Russian language, and Nigeria for example has a number of officials being trained as international interpreters. Easy communication is an essential factor in the rapid development of diplomatic relations; and the African countries in view of their earlier experiences are eager to remedy any linguistic defects.

Apart from the fact that all the Russian diplomats can freely discuss in the main official African languages, the Russian Embassies often maintain interpreters for technical matters. This becomes essential with wider co-operation in the economic, scientific and technical fields. In Soviet-African diplomatic practice, diplomats serving in the various countries are often issued with identification cards. This

enables the diplomat concerned to receive proper attention and treatment in accordance with the rules governing diplomatic privileges and immunities. Article 31 of the Soviet 1966 Statute on 'Diplomatic and Consular Missions of Foreign States on the Territory of the U.S.S.R.' stated that the Ministry of Foreign Affairs of the U.S.S.R. was to issue proper identification cards to persons entitled to diplomatic privileges, with the exception of the non-resident personnel referred to in Articles 9, 18 and 29.

The first category of persons granted full diplomatic status (i.e. rights, privileges, immunities and exemptions) includes the head of the mission and the diplomatic personnel, including counsellors, trade delegates and their substitutes, military, naval and air attaches and their deputies, First, Second and Third Secretaries, attaches and archivists of the mission.²⁵ In addition, the families of heads of missions and the diplomatic personnel fall within this category provided they all stay in the same household and are not Soviet citizens.²⁶

Diplomatic immunities and privileges are well defined by the 1961 Vienna Convention;²⁷ and although the Soviet Government often claims that it adheres strictly to these rules,

25. K. Grzybowski - Soviet Public International Law (Durham, 1970), p. 302.

26. Ibid.

27. U.N. Doc. A/Conf. 20/13.

some African diplomats have complained of a lack of full privileges and immunities. Article 31(1) of the 1961 Vienna Convention stated that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state.

"He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- (a) a real action relating to private immovable property situated in the territory of the receiving state, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions."

An African diplomat has denied that African diplomatic agents in the Soviet Union enjoy to the full the rights and privileges which are compatible with their status.²⁸ This diplomat claimed that for such trivial offence as violation of traffic rules, diplomats are charged on the spot, fined and made to pay immediately without any opportunity for objection or protest. This is not the practice in the African countries. Once a diplomat is accepted as a diplomat, he enjoys to the full the rights and privileges compatible with his status. However strained relations at times make some African countries to contravene this rule as it was the case in Congo.²⁹

28. This fact was got during the author's interview with an African diplomat in Moscow who choses to remain anonymous.

29. See below.

Article 26 of the Vienna Convention provides that subject to the local laws and regulations on prohibited areas for the purpose of national security, the receiving state shall ensure to all members of the mission freedom of movement and travel in its territory. One of the complaints made by African diplomats is that, apart from the prohibited zones, they have to obtain special permission from the Soviet Ministry of Foreign Affairs in order to make ordinary private visits to other parts of the Soviet Union. In most African countries, Soviet diplomats are permitted to travel at large without hindrance and without having to obtain permission from the Government concerned for private journeys.

The reason given by the Soviet authorities for such hindrance on free movement is that it enables the local authorities to become aware of the presence of a Foreign Diplomat, and for the necessary treatment to be accorded him so that he would not be molested by 'hooligans' - a word used in Soviet diplomatic parlance to describe organised thugs. In Afro-Soviet diplomatic practice, the resident diplomatic agent is issued with special diplomatic car plates. This is different from the practice in Britain where the diplomatic agent buys an almost invisible 'CD' plate to be affixed and exhibited alongside the original registration number plate, whereas the Soviet-African practice is to issue special diplomatic car plates free of charge, and this is done officially by the Protocol department of the Ministry of Foreign Affairs of the country concerned. The only

difference here is that whereas the Soviet Ministry of Foreign Affairs issues the plates on a mission basis, (e.g. The British Embassy's number is "D01", French Embassy "D03" and the Nigerian Embassy "D53"; so that all diplomats working at the British Embassy bear "D01" as their plate number, all French diplomats "D03" and all Nigerian diplomats "D53") the African Ministries often register diplomatic cars serially and not on a mission basis.

Article 27 of the Vienna Convention of 1961 defines the right of a diplomatic mission to employ all appropriate means, including diplomatic couriers and messages in code or cipher, in communicating with the home government and the other missions and consulates of the sending state. This is clearly reflected ✓ in the practice in Soviet-Afro diplomatic relations. The 1966 Soviet Statute on 'Diplomatic and Consular Missions of Foreign States on the Territory of the U.S.S.R.' made the necessary provisions to achieve these ends. The same applies to various African Statutes regulating diplomatic intercourse. Paragraph 7 of Article 27 of the Vienna Convention allows diplomatic bags to be entrusted to the captain of a commercial aircraft scheduled to land at an authorised port of entry. The Nigerian Embassy in Moscow makes use of the services of the captains of the British aircraft on regular flights to the Sheremetova airport in Moscow, while the Soviet Embassy sends its diplomatic bags in the care of the captains of Aeroflot aircraft flying to Lagos.

Article 9 of the 1966 Soviet Statute on 'Diplomatic and Consular Missions of Foreign States on the Territory of the U.S.S.R.' stated that missions may establish and use radio stations only when permitted by the competent organs of the U.S.S.R. At present no such privilege is enjoyed by the African Missions in the U.S.S.R. The use of radio stations at the present stage of diplomatic relations is perhaps of more use and importance to the developed nations than to the developing nations. The super-powers utilize this means for carrying out espionage and for transmitting intelligence reports. The African nations are less concerned with such activities and have no need for them at present. In most African Embassies there are telex machines for sending direct messages home, although these messages have to pass through the Soviet External Telecommunication Service.

Paragraph 2 of Article 36 of the Vienna Convention states that the personal baggage of a diplomatic agent shall be exempt from inspection unless serious grounds exist for presuming that it contains articles not covered by the exemptions granted in paragraph 1 of that Article (i.e. articles for the official use of the mission; articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment).

The Charge D'Affaires of the Congo (Leopoldville) Embassy in Moscow in 1964, Mr. Gaston N'Gambani, enjoyed diplomatic immunity as granted by this Article when he was to leave the Soviet Union at the closure of the Congolese Embassy there. The Charge D'Affaires' departure from the airport was held up for 30 minutes when Soviet customs officials inspected every item in the luggage of Mr. Jean Nkazinduli, the driver at the Congolese Embassy accompanying Mr. N'Gambani home, who was not covered by diplomatic immunity. Mr. N'Gambani was not searched, being covered by his status.³⁰ This type of immunity and privilege was violated by Mr. N'Gambani's Government a year earlier when Congolese security agents forcibly searched Mr. Boris Bogonin, the Soviet Embassy Chancellor in Leopoldville and his press attache Mr. Yuri Miakotynkh.³¹

African diplomats serving in Moscow, find on arrival, a rather strange system which is hard to classify as falling under immunities and privileges enjoyed by foreign missions in the Soviet Union. This is the special monetary system and shopping scheme for diplomats. Diplomats are issued with special certificates representing money and sometimes referred to as "Serial D". With this money, they can purchase articles at special shops (prohibited to Russian citizens). This arrangement merits the description of a special privilege to foreign diplomats in view of the fact that apart from the rebates on articles purchased here, 95% of the materials sold

30. The Guardian, 18 December 1964.

31. Times, March 4, 1963. Even after the strain to diplomatic relations between the two countries in 1963, the Congolese security men in January 1965 violated the Soviet Mission by illegally entering it and ransacking the rooms.

in the special shops are not available in the Russian local shops. The special shop is staffed with Russians who can speak English, French, German and sometimes, some local African languages like Swahili and Hausa. In the African countries, there is no such distinction for diplomats. The reasons for this system might be attributed to the Soviet Economic System, and the desire for foreign exchange. The latter is strongly supported by the fact that, in view of the high rate of currency speculation by foreign diplomats, the Soviet authorities still prefer to maintain this strange system as such.

Paragraph 2 of Article 22 of the Vienna Convention of 1961 states that the receiving state is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity. In some African Embassies in the Soviet Union, one of the 'precautionary' methods adopted by the Soviet Union is the stationing of police posts outside their buildings. In certain cases, the 'precautionary' action is mainly to keep surveillance on the movements of the officials, and in other instances there are genuine intentions such as keeping off student demonstrations and riots against friendly missions.

However, the incident which occurred at the Kenyan Embassy in Moscow in 1969 is difficult to blame on the Soviet Government irrespective of the Kenyan Government's protest and allegations. A group of Luo students (a tribe in Kenya to which the pro-Soviet Kenyan leader of the opposition belongs) attacked the Kenyan Ambassador Mr. Kayanda, causing damage to official documents and furniture inside the Kenyan Embassy. Outside the embassy were two policemen guarding the embassy. The Ambassador protested to the Soviet Foreign Ministry about the fact that the two policemen outside the Embassy did nothing to stop the demonstrators while the Kenyan Government, in a note to the Soviet Embassy in Kenya, accused the Russians of an unfriendly act and asked for compensation for damage caused. The Soviet Government did express regret at the incident, and 'expelled' some of the students to other European communist countries. In the opinion of the writer, the Soviet policemen would not have been entitled to enter the Embassy without the invitation of the head of that mission.

After this analysis of the immunities and privileges enjoyed by and denied to diplomats in Afro-Soviet diplomatic practice, it may be useful to examine the general conditions and various aspects of the diplomatic relations between the two sides.

Diplomatic status, once accorded to a diplomatic agent may be terminated as a consequence of the rupture of diplomatic relations (which may occur for various reasons). The years of diplomatic relations between the Soviet Union and the individual African countries have witnessed various ruptures and suspensions of diplomatic relations. The Soviet Embassies in Africa have been involved above all in illegal activities incompatible with their diplomatic status, mainly in the form of inciting the Africans to revolt against their governments, abetting revolutionary organizations to topple legitimate governments, encouraging students, workers and trade unions to strike and demonstrate for internal reforms. All these no doubt contravene Article 41 of the Vienna Convention which categorically forbids foreign missions and their agents from taking part in such activities. On more occasions than the Soviet Government, the African Governments have had to use the device of persona non grata in relation to Soviet diplomatic agents.

VI. RECIPROCITY IN SOVIET/AFRICAN DIPLOMATIC PRACTICE.

Sometimes, the Soviet Government entirely refrains from commenting on the expulsion of a diplomat from its Mission in Africa, and takes no retaliatory action. This however does not imply that the principle of reciprocity or retaliatory action is absent in Soviet diplomatic practice with the African countries. When patience and tact are exhausted, the Soviet Government sometimes takes retaliatory action.

When the Congolese (Leopoldville) police manhandled two Russian diplomats in 1963, the Prime Minister, M. Cyrille Adoulla, declared the entire staff of the Soviet Embassy in Leopoldville persona non grata adding that diplomatic relations between the two countries were not broken as such but only suspended.³² After patiently waiting for a year, the Russians retaliated. In November 1964, the Congo (Leopoldville) Charge D'Affaires in Moscow was 'brutally manhandled' by the Russians. The Congolese Government called the incident 'an act of provocation' and demanded an inquiry.³³ The Russians not only ignored the demand, but chose that time to issue a statement condemning intervention in the Congo by foreign powers.

"All foreign interference in the internal affairs of the Congo should be ended at once. The Congolese people like the other peoples of Africa should be given every opportunity to settle their affairs themselves and build their own independent national state."³⁴

The Soviet Government completed the retaliatory steps on December 16 1964 by ordering the Congo (Leopoldville) Government to close its Embassy in Moscow, and in a tone similar to that of the Congolese Government a year earlier when it was closing its Embassy in Moscow, (though weaker) the Soviet Government added that the action did not mean a break or suspension of diplomatic relations.³⁵

32. Times, November 22 1963.

33. Daily Telegraph 13 November 1964.

34. Tass in Soviet News, 22 November 1964.

35. It was only in December 1967 that the two Governments agreed to resume diplomatic relations.

Again, when the Russian diplomat, Victor Eliseev, the First Secretary at the Soviet Embassy in Kenya, was expelled by the Kenyan Government in April 1969,³⁶ the Russians retaliated the following month by expelling Mr. S.M. Maitha a Kenyan diplomat at the Moscow Embassy and of equal rank with Mr. Eliseev.³⁷ Neither Government gave any official reason for the expulsion, but it may be assumed that while Mr. Eliseev's expulsion must have been connected with illegal activities in Kenya, Mr. Maitha's expulsion was simply a retaliatory measure. Generally, in strained diplomatic relations between the Soviet Union and the African States, the Soviet Government has been the accused, and responsible in one way or another for violating principles of diplomatic law.

VII. IDEOLOGY AND DIPLOMATIC PRACTICE

In 1969 alone, the Ivory Coast broke off diplomatic relations with the Soviet Union; Ethiopia and Kenya expelled Soviet diplomats; and relations with Senegal were marred. Hardly a year passes in the history of diplomatic relations between the two sides without a Russian official being expelled from an African country. The reasons for this are well known. Apart from utilizing diplomatic relations to achieve its own

36. New York Times, 13 April 1969.

37. Guardian, 6 May 1969.

national interests, in the form of expanding trade and economic relations with the African countries,³⁸ diplomatic relations, in the Soviet view, have an indisputable task of fostering Soviet ideological interests in Africa. Both interests may be significantly furthered in the course of diplomatic relations.

Soviet ideological interests contradict the nationalism of the African States. The Marxist concept of socialist internationalism, which forms the cornerstone of socialist international relations³⁹ was quoted by Breshnev as

"Signifying lofty responsibility for the destinies of socialism not only in one's own country but throughout the world...It also signifies the profound understanding of the historical role played by the Socialist countries in the world revolutionary process, in supporting the liberation, anti-imperialist struggle of the peoples."⁴⁰

Viewing this assertion alongside another Marxism-Leninism concept which claims that there are no distinctions between the interests of the working class of a country and those of the international proletariat,⁴¹ it may be clearly seen why the Soviet government becomes involved so often with the African Governments thereby causing diplomatic ruptures and instability.

38. See, Grzybowski, Op. Cit. pp. 290-292.

39. Novoseltsev, Leninist Foreign Policy and the Revolutionary Renewal of the World. International Affairs, Vol. 5, 1971 pp. 9 - 18.

40. On the Leninist Course. Speeches and Articles. Vol. 2, Moscow, 1970, p. 424.

41. V.I. Lenin, Collected Works, Vol. 21.

The Russians believe that the African scene is ripe for a socialist take over, and fulfilling its 'international responsibilities' (mostly under diplomatic cover), it has to aid anti-government elements to establish 'progressive governments' in these African countries.⁴²

Irrespective of these discouraging aspects in the diplomatic relations between the Soviet Union and the African States both sides have maintained bewildering characteristics of high level diplomacy. As stated in chapter one of this work, neither side has ever allowed changes in the domestic political situation to disrupt their relations even when these changes do not favour the other State concerned.

VIII. CONFLICTING NATIONAL ASPIRATIONS OF THE AFRICAN STATES.

One other aspect worth noting in Soviet-African diplomatic relations and practice is the sometimes confusing manner in which relations have been carried on over the years. The contradictory courses of closer involvement with the Soviet Union while at the same time trying to exclude Soviet influence remains a puzzle to Sovietologists, observing diplomats and Africanists as well. During the 1970 visits of the U.S. Secretary of State, William, P. Rogers to some of the African countries, the Western press reported that Emperor Haile Selassie of Ethiopia expressed fears to him over growing Russian influence

42. A. Kiva, Africa: The National Liberation Movement Today. International Affairs. (August 1972.)

in the Red Sea area and East Africa, and called on America to increase its military aid of \$ 11 million a year to Ethiopia.⁴³ Some few months later, the Emperor left for Moscow on "a friendly official visit".⁴⁴ At a lunch in the great Kremlin, President Podgorny of the Soviet Union attacked American aggression in Indo-China and referred to African efforts to be free. In his own reply, the Emperor also condemned the U.S. escalation of the South East Asian war; and on Africa he stated that a stubborn and difficult struggle for the independence of a number of African States lay ahead, and expressed his convictions that these countries would soon be free.

"In this struggle," the Emperor asserted, "the African countries could rely on the assistance of the Soviet Union."

In a joint communique after the visit, it was pointed out that agreement had been reached on sending to Ethiopia a group of Soviet Socialists

"For a further study, jointly with the appropriate Ethiopian representatives, the ways and means of expanding the sphere of co-operation between the two countries."⁴⁵

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43. I.H.T. 13 February, 1970; N.Y.T. 13 February 1970.
 44. Daily Telegraph 29 May 1970.
 45. Soviet News, 2 June 1970.

Another strange relationship is the one existing between Libya and the Soviet Union. Colonel Ghadafi was persistent in his attacks on the Soviet Union involvement in the abortive Sudan coup, and in early 1972 condemned Iraq for moving too close to the Russians,⁴⁶ and on several occasions has declared his opposition to communism. As in most Maghreb countries, the communist party is banned in Libya.

But in March 1972, the first break in the Western monopoly of Libyan oil development was made by the Soviet Union when an agreement was signed with Libya to co-operate in prospecting, extracting and refining oil. The agreement also covers prospecting for natural gas and minerals, and the training of Libyan cadres in the Soviet Union.⁴⁷ It was also announced that both Mr. Breshnev and Mr. Kosygin were to make an official visit to the African State in the nearest future. The introduction of Russian technicians and instructors, and visits by the Soviet leaders run counter to the vehement insistence of Ghadafi on maintaining the purity of Libya's nationalism.

IX. TREATY OF FRIENDSHIP AND CO-OPERATION.

Friendly co-operation among States is one of the basic aims of contemporary international law. The Charter of the UN,

46. I.H.T. 25 February 1972.

47. Ibid.

and other documents related to this Organisation are testimonies to this assertion. One of the purposes of the UN is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.⁴⁸ The Declaration on Principles of Friendly Co-operation also confirms the determination of the UN to maintain friendly relations among nations of the world. One of the legal means of achieving this objective of international law is by bilateral Treaties of friendship among states.

Soviet treaties of friendship have been mainly limited to the members of the Socialist commonwealth of nations.⁴⁹ Apart from the ideological ties which might have facilitated conclusion of such treaties among the members of the Soviet bloc, the majority of them are geographically situated in Europe, sharing territorial boundaries, cultures, language and common features. The Slavs are a good example.

48. U.N. Charter Article 1, para. 2.

49. The Soviet Union has agreement of friendship with a few non-socialist countries as well. For example: U.S.S.R. - Afghanistan Treaty of Friendship of 28 February 1961; U.S.S.R. - Yemen Treaty on Friendship and Trade of 1 November 1928, renewed in 1955 and again in 1964; U.S.S.R. - India Treaty of Peace, Friendship and co-operation, 9 August 1971; U.S.S.R. - Iraq Treaty of Friendship and Co-operation, 9 April 1972.

It was only in May 1971 that the Soviet Union signed its first and only treaty of friendship with an African country - the United Arab Republic.⁵⁰ In Soviet treaty practice, the different nomenclature of treaties or instruments so called has no bearing on the legal contents of such instruments. In simple terms, a political treaty such as a treaty of friendship can be described by different names, though the principal aims of such treaties would normally be friendship, co-operation, mutual aid, and joint efforts against aggression.⁵¹

The Soviet-U.A.R. treaty to most students conversant with Soviet-African relations was only a confirmation of a de facto situation. Egypt had been the greatest recipient of Soviet aid to Africa, and both countries are examples of what could be referred to as good Soviet-African relations. However, before the treaty was signed, there were doubts and comments about the Soviet-Egyptian relations which were marred by the internal purge against elements loyal to the Soviet views in U.A.R. The treaty therefore was a product of the effort to establish the Soviet-Egyptian relations on a formal long-term treaty basis, defining mutual commitments and obligations that would dispel the doubts and fears hanging over the traditional relations between the two States.

50. Pravda, 28 May 1971. The treaty was signed on 27 May 1971. We are mainly concerned with the legal aspects of this treaty, and as such shall not discuss the political issues involved.

51. See for examples the following treaties. Polish, U.S.S.R. Czechoslovakia - Treaty of Friendship, Mutual Aid and Post War Co-operation; U.S.S.R.-Mongolia - Treaty of Friendship and Mutual Aid.

The preamble of the Soviet-Egyptian treaty expressed the conviction that

"The further development of friendship and all round co-operation between the U.S.S.R. and the U.A.R. meets the interests of the peoples of both states and helps to strengthen world peace."

According to the preamble, both sides found the basis for further development and strengthening of the traditional relations of 'sincere friendship' between them as a result of certain ideals they both shared, namely, the importance of the struggle against imperialism and colonialism, for freedom, independence and social progress of their peoples, and for international peace and security. All these commonly cherished ideals tended to have stimulated the conclusion of the Treaty of Friendship.

An outstanding feature of Soviet-Egyptian Treaty of Friendship is its all embracing nature. This actually distinguishes it from other forms of Treaties such as Navigation and Commerce. Also, whereas such treaties as Economic and technical co-operation, Trade and Payments, Cultural and others deal with concrete, restricted aspects of international co-operation, the Soviet-Egyptian Treaty covered not only political, but economic, scientific and other forms of co-operation. Thus, Article 1 of the Treaty stated:

"The High Contracting Parties solemnly declare that unbreakable friendship will always exist between the two countries and their peoples. They will continue to develop and strengthen the existing relations of friendship and all-round co-operation between them in the political, economic, scientific, technological, cultural and other fields."

In this Article, both sides touched on the vital forms of co-operation between states and in so doing laid down the legal basis for the further development of those aspects of co-operation where they had existed, and for their establishment where they have not yet been developed. Similar to Article 1 in content were Articles 5 and 6 of the Treaty. Article 5 for instance basically expanded the spheres of their co-operation in the economic and technological fields, which would include joint co-operation in the development of natural resources, the development of power engineering and the training of national personnel and the development of other fields of the economy. Further, the two sides decided to expand trade and maritime shipping on the basis of the principles of mutual benefit and most favoured nation treatment.

Article 6 has to do with cultural co-operation by promoting co-operation

"in fields of science, the arts, literature, education, the health services, the press, radio, television, the cinema, tourism, physical culture and other fields."

Another important Article of the Treaty is Article 8, where appeared what could be interpreted as a one sided obligation on the part of the Soviet Union. It states,

"In the interests of strengthening the defence capacity of the United Arab Republic, the high contracting parties will continue to develop co-operation in the military field on the basis of appropriate agreements between them. Such co-operation will provide specifically for assistance in the training of U.A.R. military personnel and in mastering the armaments and equipment supplied to the United Arab Republic with a view to strengthening its capacity to eliminate the consequences of (the) aggression as well as increasing its ability to stand up to aggression in general."

Throughout the provisions of the Treaty, there was no specific reference to any third country as such, but there could be no doubt that it contained silent messages to the belligerent opponent of Egypt in the Middle East - the state of Isreal, and to an extent the United States of America, a close ally of Isreal. It is almost impossible to find a political treaty of such a nature devoid of a joint message directly or indirectly (most often indirectly) to significant third parties.⁵²

The first operative paragraph of Article 8 stated that the development of co-operation in the military field with a view to strengthening Egyptian defence capacity would be achieved

"on the basis of appropriate agreements between the parties".

Sovietologists and Africanists are no doubt aware of the grievance of Egypt over the refusal of the Soviet Union to supply it with modern sophisticated weapons to fight Isreal.

In complying with the law of treaties, Egypt could invoke that provision of the agreement to request the Soviet Union to honour its obligations. Indeed, the expulsion of the Soviet Military Advisers from Egypt in the middle of 1972 was not unconnected with this fact. President Sadat during his address to the Central Committee of the Arab Socialist Union (A.S.U.), said:

52. Radio Cairo of 28 May 1971 stated that the agreement signed by Egypt and the U.S.S.R. gives impetus to the Arab struggle to liquidate "the consequences of aggression" (A.R.B. (P.& C.) Vol. 8, No. 5, 1971, p. 2117).

"After studying all the aspects of the situation and out of full appreciation of the Soviet Union's great assistance to us and full care for its friendship, I find it proper, while we were on the threshold of a new stage of this friendship to make the following decisions."⁵³

Having listed decisions 1 and 2 which dealt with the expulsion orders and arrangements, decision 3 reads thus:

"To call within the framework of the Treaty of co-operation and friendship with the Soviet Union for an Egyptian-Soviet meeting, at a level to be agreed on, for consultations regarding the coming stage."⁵⁴

It is appropriate to presume that the Egyptian Government might have to a great extent relied on this Article, for in the absence of such a provision in the treaty, Egypt would have had no legal basis for urging such consultations. So for the first time, the Soviet-Egyptian treaty was faced with translating its paragraphs into practical objectives.

Treaties of Friendship and Co-operation between the Soviet Union and the African countries could possibly form one of the most productive forms of co-operation between them if properly contracted and executed. However, in the Soviet-African relationship, there are doubts as to the possibility of ever contracting a document worthy of that title. There are two main reasons for this conclusion. The Egyptian-Soviet

53. Ibid. Vol. 9, No. 7, 1972, p. 2550A.

54. Ibid., p. 2550B.

Treaty being the first Soviet-African treaty of that nature serves to support the above conclusion. Contemporary international law demands that the joint actions of a group of states should not be detrimental to, or infringe on the rights of others or threaten world peace.

The Soviet-Egyptian treaty because of the political circumstances which prompted its being contracted, does not serve as a good example of what an ideal Treaty of Friendship should be.

Foremost, Soviet sources maintain that the capacity to conclude a treaty of friendship and co-operation is an attribute of the socialist system alone, and that in reality, the conclusion of such treaty is not possible between non-socialist states where exploitation of man by man exists. Furthermore, the terms 'friendship' and 'co-operation' as applied among the socialist states possess deeper meanings than as normally understood in international law.⁵⁵

Article 2 of this treaty stated:

"The Union of Soviet Socialist Republics as a socialist state and the United Arab Republic, which has set itself the aim of reconstructing society along socialist lines, will co-operate in all fields..."

55. Mezhdunarodnie Pravovie Formi Sotrudnichestva Socialisticheskix Gosudarstv. (International Legal Forms of Co-operation of the Socialist States.) (edit. V.M. Shurshalov) (Moscow, 1962), p. 83.

This Article confirms that the Soviet Union recognises Egypt as a prospective socialist state hence, it could contract such a treaty with it. But, though most African States are attracted by certain socialist modes of development, the majority of them have not chosen socialism as a system. They claim to be non-aligned, a policy which makes them more reserved over going into treaties which would amount to contravening the aims of their policy.

From both the African and Soviet views therefore, it seems that treaties of friendship and co-operation as a form of strengthening relations is a very remote possibility except they both reverse their policies.

X. BILATERAL MEETINGS AND CONSULTATIONS

State practice seems to confirm the importance of bilateral meetings and consultations as instruments for promoting international co-operation between states. Large and small states, desirous of sharing common values and interests, often meet and consult on matters of mutual concern.

In consequence of the institution of bilateral meetings and consultation in Soviet-African legal co-operation, numerous agreements, protocols, declarations, joint statements, joint communiques, telegrams and the like have been concluded. These documents cover a wide range of subjects, such as economic, political and cultural relations. Bilateral meetings and consultation are not only a means of promoting friendly co-operation between states, but serve also as a means of testing the vitality of such co-operation. Lack of meetings and consultation between states at regular periods sometimes indicates that the relationship between them is less than cordial.

The institution of bilateral meetings and consultation is of great importance in co-operation between the Soviet Union and the African States. In 1965 alone, no less than five African heads of State visited the Soviet Union.⁵⁶ Reciprocal visits have been made by the Soviet leaders - especially to the Arab countries of North Africa.⁵⁷ An important outcome of bilateral meetings and consultation is usually the signing of one form of a document or another on specific items of interest or on general matters. In state practice, these documents appear in the form of agreements, declarations, statements, joint communiques etc. In Soviet-African co-operation the instrument most commonly signed after bilateral meetings and consultation is the joint communique.

XI. LEGAL STATUS OF JOINT COMMUNIQUE

Standard textbooks on international law have not yet seriously considered the question of the legal status of joint communiques. This is unfortunate indeed, since its use is

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56. Among the African leaders who visited the Soviet Union in 1965 alone were, Col. Boumedienne of Algeria, President Sekou Toure of Guinea, President Modibo Keita of Mali, President Obote of Uganda, and President Abdel Nasser of Egypt. The number increases yearly.
57. Since the early sixties when Premier Kruschchev, his First Deputy Premier, Mr. Mikoyan, and Mr. Breshnev visited West Africa, no equally high ranking Soviet official has visited this part of Africa. In fact, Mr. Gromiko, the Soviet Foreign Minister visited Africa for the first time in 1972. "West Africa" 14 July 1972, p. 920.

becoming more widespread among states.⁵⁸ In the course of the present inquiry, it will be seen that certain treaty attributes are present in a joint communique; and it will be suggested that under proper conditions and in appropriate formulations, joint communiqués might constitute a form of treaty.⁵⁹ Since this inquiry is to establish the legal significance of a communique, it is essential to refresh our minds on the characteristics inherent in instruments so called treaties.

Article 2, paragraph 1 of the Vienna Convention of 1969 defines a treaty as an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

58. Since the inception of the Soviet Government in 1917 up till 1957, joint communique under its various titles (press communique, final communique and communique has been officially used not less than 175 occasions. It was first used as an unsigned communique between the U.S.S.R. and Turkey of 14 November 1926 concerning strengthening of political relations. To testify to its rapid usage, it was used between the Soviet Union and other countries between 1926 and 1953 only on 61 occasions, whereas from 1954-1957 it was used on 114 occasions. In recent years, the usage has increased, which points to the importance of this instrument as a useful element of co-operation. In Soviet-African relations, communiqués have been registered in different volumes of the Ministry of Foreign Affairs, Collection of Treaties, Agreements and Conventions in Force concluded by the U.S.S.R. with Foreign Countries. See for example volume XXIV (1971), and the 17 July 1965 Soviet-Gambian Communique on the establishment of diplomatic relations.

59. For present purposes, the citation of joint communiqués may be limited to Soviet treaty practice.

Professor Oppenheim defines treaties as agreements of a contractual character, between states, creating legal rights and obligations between the parties.⁶⁰ The latest Soviet book on international law defines a treaty as an agreement between two or more states or other subjects of international law concerning the establishment, change or stoppage of their mutual rights and obligations.⁶¹

In the three definitions above, the element of consent is stressed. A treaty, being an agreement, needs the mutual consent of the contracting partners; mere proposals made by one party and not accepted by the other are therefore not binding upon either.⁶² Professor Schwarzenberger states that every treaty has four constituents:

- (i) the parties must have intended to act under international law.
- (ii) it presupposes the capacity of the parties to conclude treaties under international law, or in other words their international personality.
- (iii) there must be a meeting of wills between the parties consensus ad idem.
- (iv) the parties must have the intention to create legal obligations.⁶³

60. Oppenheim, International Law, vol. 1, (1955) p. 877.

61. A Treatise on International Law, Op. Cit. (Moscow, 1972) p. 201. On treaties generally, see Lord McNair The Law of Treaties, 1961; D.P. O'Connell International Law, (London, 1970), pp. 195-265; D.W. Greig, International Law, (London, 1970), pp. 356-390.

62. Oppenheim, Op. Cit., p. 890.

63. A manual of International Law, 5th ed. (London, 1967) p. 151.

In reaching a decision as to whether a given instrument is or is not a treaty, it is possible to conclude that a state has created political or moral as opposed to legal commitments. It has therefore been rightly noted that the decisive factor in ascertaining the legal nature of an instrument (or related instruments) as a treaty is not its description, which varies, but whether that instrument is intended to create legal rights and obligations between the parties concerned.⁶⁴ This view was well illustrated by the statement that, in the absence of an intention of the parties not to create legal obligations, the effect of consent given in accordance with the requirements of international law is to create legal rights and duties between the contracting parties.⁶⁵

Relating the above views to the status of joint communiques, it is incorrect to assume that all joint communiques qualify for description as treaties, or that they are law-making. The converse assumption is also to be avoided, namely that all joint communiques are devoid of any binding character, as a few writers claim. Thus Professor Myers wrote;

"communiques, joint statements, protocols of proceedings of meetings are not themselves treaties, though they may contain instruments which the participants decide to treat as such."⁶⁶

64. Oppenheim, Op. Cit. p. 900.

65. Schwarzenberger, Op. Cit. p. 150.

66. Names and Scope of Treaties. AJIL, 51, (1957), p. 6.

In a similar tone, Dr. Hamzeh stated

"it is worth while mentioning other international compacts that are devoid of a common policy or common standard of behaviour, and fall short of imposing any legal commitment on the parties involved, resting on the notion of moral responsibility and an engagement of honour."⁶⁷

The only way to distinguish between treaties properly so called and other decisions or acts of states less than treaties is to gauge the document as a whole by reference to the characteristics inherent in a treaty. Since the form and manner of an agreement is immaterial to the legal consequences of the act, and the question of whether an agreement is formal or informal depends upon the gravity of the problems dealt with and their political implications, and further, since the name given to a particular instrument is immaterial provided the parties have contractual capacity in international law,⁶⁸ the legal contents of some joint communique may be examined.

The Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics registered a document⁶⁹ of

67. Agreements in Simplified Form - Modern Perspective. B.Y.I.L. XLIII, (1968-69), p. 181.

68. J.E.S. Fawcett, The legal character of International Agreements, B.Y.I.L. XXX (1953), pp. 381-383; also, D.P. O'Connell, Op. Cit. p. 195; Slusser and Triska, A Calendar of Soviet Treaties, 1917-1957 (California, 1959), p. IX.

69. UNTS, Vol. 20, 1948. The communique was registered on 10 December 1948, though it came into force on 27 December 1945.

which the registered number was 319 and the title was "Communique on the Moscow Conference of the three Foreign Ministers, signed at Moscow on 27 December 1945, and Report of the Meeting of the Ministers of Foreign Affairs of the Union of Soviet Socialist Republics, the United States of America and the United Kingdom, dated 26 December 1945, together constituting an Agreement relating to the preparation of peace treaties and to certain other problems..."

Professor Lauterpacht suggested that in the absence of evidence to the contrary, registered documents should be deemed to create legal obligations and rights.⁷⁰ Paragraph 1 of Article 102 of the UN Charter has this to say on the registration of treaties:

"Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be⁷¹ registered with the Secretariat and published by it."

In view of Professor Lauterpacht's suggestion above, it might have been possible to assume that the communique of the three powers, having been registered in accordance with Article 102(1) of the Charter, had created legal rights and obligations for the parties. But the difficulty is that although the UN Secretariat reserves the right of the parties to an agreement

70. UN Doc. A/CN.4/87, p. 4.

71. UN Charter, Article 102(1).

to recognize such an instrument as having created legal rights and obligations, registration of that instrument within the context of Article 102(1) in the Secretariat's opinion

"does not confer on the instrument the status of a treaty or international agreement if it does not already have that status and does not confer on a party a status which it does not otherwise have."⁷²

Thus the mere registration of an instrument does not seem to confer upon or detract from the pre-existing legal status of such an instrument.

Although the Secretariat categorically stated on another occasion that

"Minutes of meetings between the representatives of Governments, where a majority of items minuted involved observations of fact, explanations, statements of views or notes of matters left for further consideration would not constitute, in themselves, a treaty or international agreement in the sense of the Charter."⁷³

it failed to clarify the situation in Article 102(1). While assuming therefore that the registration of an instrument does not add to or detract from its legal status, it is worthwhile analysing the contents of such an instrument and noting how far it intends to create legal rights and obligations.

72. ST/LEG/Ser.A/105.

73. 5 Repertory of United Nations Practice, Article 102, para. 31(e), p. 295. In the Legal Status of Eastern Greenland Case, concerning the claims of Denmark over Eastern Greenland, the Norwegian Foreign Minister M. Ihlen gave a pledge in a recorded minute to the effect "that the Norwegian Government would not make any difficulties in the settlement of this question". The I.C.J. came to the conclusion that, "as a result of the undertaking involved in the Ihlen declaration of July 22, 1919, Norway is under an obligation to refrain from contesting Danish Sovereignty over Greenland as a whole, and a fortiori to refrain from occupying a part of Greenland."

In the Three Power Communique of 27 December 1945, there is no doubt that the parties intended it to be an agreement as may be seen from the title. It was stated that the Communique and the Report of the Ministers of Foreign Affairs "together" constitute an agreement relating to the preparation of peace treaties and to certain other problems. The Communique further stated that,

"At the meeting of the three Foreign Ministers, discussions took place on an informal and exploratory basis and agreement was reached on the following questions:"

- (i) Preparation of Peace Treaties with Italy, Rumania, Bulgaria, Hungary and Finland.
- (ii) Far Eastern Commission and Allied Council for Japan.
- (iii) Korea; (iv) China; (v) Rumania; (vi) The establishment by the United Nations of a Commission for the control of Atomic energy.

Each question created legal rights and obligations for the parties. Thus on question (i):

"the terms of the peace treaty with Italy were to be drafted by the Foreign Ministers of the United Kingdom, the United States, the Soviet Union and France";

"the terms of the peace treaties with Rumania, Bulgaria and Hungary by the Foreign Ministers of the Soviet Union, the United States and the United Kingdom";

"the terms of the peace treaty with Finland by the Foreign Ministers of the Soviet Union and the United Kingdom."

Operative paragraph 5 stated;

"The peace treaties will come in force immediately after they have been ratified by the Allied States signatory to the respective armistices, France being regarded as such in the case of the peace treaty with Italy. These treaties are subject to ratification by the enemy states in question."

A Far Eastern Commission and Allied Council for Japan was drawn up and its terms of reference were elaborately defined in the agreement.

Professor Slusser and Triska⁷⁴ have provided examples of a series of communiques dating from the early treaty practice of the Soviet Union. In fact, the term "quasi-agreements" was used to describe joint communiques.⁷⁵ In the examples of communiques given, attributes appear which are similar to those of treaties properly so called. In a joint communique by the U.S.S.R. and Czechoslovakia concerning trade relations signed at the end of negotiations which lasted from July 13 1947, agreements reached included the following:⁷⁶

- (i) A 5-year trade agreement to be negotiated; annual trade contingents to be established by separate agreements.
- (ii) Deliveries for 1948 to be agreed upon before signature of the 5-year agreement.

74. A Calendar of Soviet Treaties, 1917-1957, (California, 1959).

75. Ibid., p. x; see also, Johnston and Chiu, Agreements of People's Republic of China, 1949-1967, A Calendar. (Massachusetts, 1968), pp. vii-x.

76. Slusser and Triska, Op. Cit. p. 234.

(iii) In 1948, the U.S.S.R. to deliver 200,000 tons of wheat, 200,000 tons of fodder grain and maize, 60,000 tons of calcic fertilizer, 5,000 tons of nitrogen fertilizer, ... etc, in exchange for Czech rails, locomotives, oil pipes, equipment for footwear and sugar industries, lathes, electric motors, etc.⁷⁷

The provisions in (i) and (ii) above were carried out in a later Trade and Payments Agreement between the U.S.S.R. and Czechoslovakia signed 11 December, 1947

"in accordance with the joint communique of July 12, 1947."⁷⁸

The third provision of the communique undoubtedly created legal rights and obligations for the parties. Thus, failure of the Soviet Government to fulfil its obligation to deliver in 1948 the listed items to the Czechoslovakian Government would have justified the Czechoslovakian Government invoking the principle of pacta sunt servanda.

The joint communique concerning negotiations between the Soviet Union and Iran signed April 4, 1946 in Moscow⁷⁹ contained the following provisions:

77. 47/vii/5/Yug/b, *ibid*.

78. *Ibid*. 47/xii/11/Cz/b, p. 240.

79. *Ibid*. 46/iv/4/Iran/, p. 209.

1. Soviet troops to evacuate Iranian territory completely, within a month and a half from March 24, 1946.
2. Agreement on establishment of a mixed Soviet-Iranian oil company to be submitted to the Iranian Mejlis for confirmation within 7 months after March 24, 1946.
3. Iranian Azerbaidzhan recognized as an internal concern of Iran.

At a later date, in accordance with 2. above, an agreement on establishment of a mixed Soviet-Iranian oil company was submitted, although it was rejected by the Mejlis on October 22, 1946.

In comparing the contents of the communiques above with the contents of other communiques, there are significant differences to be noticed. Thus the joint communique by the U.S.S.R. and Norway initialed 15 November 1965⁸⁰ concerning diplomatic negotiations mentions discussion of

1. measures to increase scientific and technical collaboration;
2. establishment of a mixed commission of experts to study use of the water resources of the Patso-Joki;
3. negotiations to be undertaken in the near future for an agreement on shipwreck and salvage service in the Barents sea;

80. 55/XI/15/Norway/a, Ibid, p. 341.

and 4. encouragement of cultural collaboration.⁸¹ The U.S.S.R.-Norway communique mentions only discussions and measures to be taken in future treaties without any obligation to conclude them. This communique amounts to no more than a record of negotiations on items of future collaboration. It may be noticed for instance, under 4. that the discussion related to the encouragement of cultural collaboration without either party being obliged to initiate such collaboration.

This form of communique can be described as punctationes which are

"Mere negotiations on the items of a future treaty, without the parties entering into an obligation to conclude that treaty."⁸²

Punctationes are non-binding.

In another joint communique by the U.S.S.R. and Denmark concerning political and other relations of 6 March 1956,⁸³ the following points were covered among others:

1. trade talks to be held in Copenhagen in the near future for the conclusion of a trade protocol;

81. In accordance with the discussion on item 2, a U.S.S.R.-Norway Protocol concerning joint exploitation of the hydroelectric resources of Patso-Joki was signed in June 1957. Slusser and Triska, Ibid. p. 384.

82. Oppenheim, Op. Cit. p. 890.

83. Slusser and Triska, Op. Cit., 56/iii/6/Denmark/a, p. 350.

2. an agreement signed on saving lives in the Baltic sea;
3. cultural ties in the fields of science, art, and education to be expanded;
4. students to be exchanged;
5. tourism to be encouraged;
6. negotiations to be held in Copenhagen in future to settle claims for damages resulting from the incorporation of the Baltic States into the U.S.S.R.
7. agreement reached on desirability of exchanging parliamentary delegations.

The contents of the communique above, seems to be reporting points covered at the bilateral consultation between the U.S.S.R. and Denmark and no more. It mentioned for instance in item 2 that an agreement was signed on saving lives in the Baltic Sea. The communique here was not an agreement but only an announcement of the establishment of a legal instrument. The fact that the agreement concerning saving human lives in the Baltic Sea between the two countries referred to in the communique was signed the same day as the publication of the communique itself, and published separately,⁸⁴ testifies further that the communique was intended to report the general points covered in consultation between them.

84. Ibid. 56/iii/6/Denmark/a, p. 350.

Similarly, the joint communique by the Soviet Union and the United Arab Republic of January 1971⁸⁵ is typical of those communiqués which are not intended by the parties to create any legal right or obligation. Extracts from the communique contain the following:

"An extensive exchange of views on questions of the further development of friendly ties and all-round co-operation between the U.S.S.R. and the U.A.R. and on current problems of the present international situation was held during the talks, which took place in an atmosphere of cordiality and complete mutual understanding."

The remaining operative paragraphs of the communique were couched in terms such as the following:

"Both sides highly assessed the state of relations";

"The two sides discussed";

"Special attention was given to";

"Both sides noted with satisfaction";

"both sides believe" etc.

Professors Johnston and Chiu, in their treatment of the value of the contents of the like of communiqués listed above, drew certain distinctions which tend to separate those communiqués which intend to create legal rights and obligations for the parties from those which are devoid of such characteristics.

85. Soviet News 16 February 1971, p. 22.

Thus there were such references as the following:

- "Joint Communique: Miscellaneous"⁸⁶
- "Joint Communique: Chinese Changchun Railway"⁸⁷
- "Joint Communique: Port Arthur Naval Base"⁸⁸
- "Joint Communique: Railway Construction"⁸⁹
- "Joint Communique: Talks (top level)"⁹⁰
- "Joint Communique: Fisheries"⁹¹
- "Final Communique: Bandung Conference"⁹² etc.

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- 86. Johnston and Chiu, Op. Cit. The communique referred to talks between China and the U.S.S.R. of 14 February 1950 which culminated in six, separate agreements. 50-3 2/14/50, p. 1.
 - 87. U.S.S.R. -China of 15 September 1952 specifically dealing with transfer of the Chinese Changchun Railway to P.R.C. Government, it provides for the establishment of Joint Commission to complete transfer by end of 1952 under 1950 Agreement, 52-50 9/15/52. Ibid. p. 14.
 - 88. U.S.S.R. -China Communique of 12 October 1954 provided for the withdrawal of Soviet troops from Port Arthur and return of naval base to P.R.C. Ibid. p. 30. The provision was fulfilled in a Final Protocol of 24 May 1955. 55-37 5/24/55 ibid. p. 39.
 - 89. U.S.S.R. - China of 12 October 1954 provides for the construction of the Lanchow-Urumchi-Alma Ata Railway. 54-66 10/12/54. ibid. p. 31.
 - 90. U.S.S.R. -China of 3 August 1958. Talks during Chairman Kruschchev's visit to China on international situation, peaceful co-existence etc. 58-74 8/3/58, Ibid. p. 84.
 - 91. China-North Vietnam of 25 April 1957 on Fishery regulations in Gulf of Tonkin, Ibid. p. 68, 57-48 4/25/57.
 - 92. A 28 Afro-Asian signed Communique on ten Principles of Friendly co-operation between States of 24 April 1955. ibid. p. 38. 55-29 4/24/55.

From the brief descriptions of the contents of communiques contained in footnotes 86-92 above, it may be asserted that while some communiques contain legal rights and obligations for the parties, some merely intend to report the outcome of talks at meetings or consultations between parties. Some of the communiques in the category of the former acquire the characteristics of pactum de contrahendo or preliminary treaty which

"requires the mutual consent of the parties with regard to certain points, whereas other points have to be settled by the definitive treaty to be concluded later."⁹³

As to the legal status of pactum de contrahendo, the view has been expressed that

"Such preliminary treaty is a real treaty, and therefore binding upon the parties. A pactum de contrahendo requires likewise the mutual consent of the parties. It is an agreement upon certain points to be incorporated in a future treaty, and is binding upon the parties."⁹⁴

Finally, a further example of the legal significance of communiques may be given. On the attainment of independent status by the African State of Togo, the Soviet Government announced in a telegram that it recognized Togo as a sovereign and independent state, and expressed its willingness to establish diplomatic relations with it.⁹⁵ Establishment of diplomatic relations cannot be a unilateral act but needs the consent of both parties. Therefore the telegram of the Soviet Government constituted a mere proposal.

93. Oppenheim, Op. Cit. p. 890.

94. Ibid.

95. Pravda, 12 April 1960.

However, when the Soviet-Togo Joint Communiqué on the "Establishment of Diplomatic relations and Exchange of Diplomatic Personnel" was published, the contents stated that agreement had been reached on the establishment of diplomatic relations and the exchange of diplomatic personnel at ambassadorial level.⁹⁶ In these circumstances, it seems clear that legal obligations had been assumed by both sides only in the communiqué since there was no other instance of formal acceptance by Togo of the original Soviet proposal. As noted earlier, it would be wrong to assert that all communiqués had the main attributes of treaties. On the other hand, recognized forms of treaties have sometimes shown by their contents that they formulate general statements of policy rather than the intent to create legal obligations.

The Soviet-French Joint Declaration of 30 October 1971⁹⁷ for instance if analysed by its contents, falls into this category, whereas the Soviet-Bangla Desh Joint Declaration of 3 March 1972⁹⁸ formulated contractual legal obligations. The Soviet-French Declaration was couched in such diplomatic expressions as:

96. Pravda, 5 May, 1960.

97. Soviet News, 2 November, 1971.

98. Ibid. 7 March, 1972.

"Both sides consider it important";

"they express their desire to make possible the prohibition of the production and the destruction"

of chemical and bacteriological weapons etc., whilst the Soviet-Bangla Desh Joint Declaration was in firm terms and declared:

"The Soviet Union will render assistance to Bangla Desh in the construction of a merchant fleet and in the development of sea fisheries. The Soviet Union will assist Bangla Desh in the reconstruction of railway transport and other items."

It should be stated in conclusion that an instrument of a contractual nature, whatever name is given to it, becomes a legal instrument and a form of treaty once it fulfils those attributes of a treaty which are required by the rules governing this important institution of international law. Therefore, if a communique contains certain legal rights and obligations, non-observance of these elements would constitute contravention of rules of international law, as well as hamper friendly relations among states.

It is hoped that the foregoing observations may generate further scholarly interest in assessing the institution of the communique, since its use is rapidly developing as a means of regulating bilateral relations among states. The establishment and maintenance of normal relations with other states, diplomatic correspondence and visits make essential the establishment of pre-conditions for formalizing these relations in relevant acts of international law.

CHAPTER IIITHE U.S.S.R. AND AFRICA AT THE UNITED NATIONSI. GROUP SYSTEMS IN THE U.N. (THE AFRICAN GROUP)

The sporadic addition of many African members to the U.N. came at a time when the bloc and group system in the Assembly was becoming a regularized process.¹ However, whereas the majority of consultative groups at the United Nations became established as a result of the gradual co-ordination of the activities of the members of such groups, the existence of the African caucusing group at the United Nations was based on official agreement of the Permanent Missions of the African countries at the United Nations. The first move to create a special caucusing group was taken in April 1958 at the Accra Conference of eight African States. Among decisions reached at the conference were the determination in its foreign policy to pursue the creation of the African personality, and make the important role of Africa felt in the world as an independent and equal subject of international law.²

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1. See in particular, Thomas Hovet: Africa in the United Nations (London, 1963). Also V.A. Brikin, Diplomatiya Novoi Afriki (Diplomacy of New Africa), (Moscow, 1970). The formation of an African group at the U.N. was thoroughly discussed in Chapter Two of this book.
 2. Nizavisimaya Afrika v Dokumentakh. (Independent Africa in Documents) (edit. R. Tuzmuhamedov) (Moscow, 1965) pp. 19-20.

As the pivot of its foreign policy, the conference declared its unflinching belief in the Charter of the United Nations, the Universal Declaration of Human Rights and the principles enumerated at the Bandung Conference. Finally, the conference decided to establish a permanent organ at the United Nations which would be composed of representatives of participants at the conference. Immediately after the Accra Conference, eight permanent representatives of the African States at the United Nations met in New York and worked out the draft of an agreement to create a consultative African group which eventually was signed by the eight representatives.

The structure of the caucusing group is divided into two - a co-ordinating committee and a secretariat. The co-ordinating committee which is composed of all the permanent representatives meets once a month unless required by any member who could demand the summoning of a meeting to discuss urgent matters. The Accra Conference defined inter alia the functions of the caucusing group. Basically, the group is intended to be a consultative organ which would afford its members ample opportunities for the exchange of information and co-operation on matters of interest to Africa. The co-ordinating committee of the caucusing group was to study the agenda of a particular session of the General Assembly and pick out specific items on which concerted African action would be taken.

The secretariat of the group was to meet regularly during sessions of the General Assembly and inform member states' delegates of the recommendations of the co-ordinating committee on matters of vital interest to Africa. Another important aspect of the agreement is that members of the African delegations at various committees of the General Assembly and other United Nations meetings should maintain very close contact with one another. The African group had, since its first appearance, been very sensitive over appointments to United Nations committees and posts and from its initial stages called for wider representation on the Security Council and the Economic and Social Council, F.A.O., etc., and has often succeeded in co-ordinating the views of its members on achieving this goal.

However, the attempts by the African group at the United Nations to achieve agreed positions on various matters, had never affected strongly the positions of individual members as depicted in their votings. An analysis of the divisions in the votings even on matters related to Africa as shown later in this chapter, confirms this assertion. The independence of action of members has always been maintained. With the majority of the African countries joining the United Nations, the African group became infiltrated with diverse ideas. The different groups that existed immediately after independence, such as the Brazaville and Casablanca groups reflected their differences in the African group at the United Nations. These differences however have not been able to split the group on matters of basic interest to Africa.

II. THE SOVIET BLOC

In contrast to the African group, the Soviet bloc exists at the United Nations headed by the Soviet Union. Thomas Hovet described a caucusing bloc as being different from a caucusing group.

"A caucusing bloc is a group of States that are organized to meet regularly on problems of common concern and are bound to vote according to group decisions."³

The voting analysis of both the Soviet bloc and the African group portray the fact that the Soviet bloc has been more consistent than the African group.⁴

Subsequently, in the co-operation between the Soviet Union and the African States at the UN, this consideration has not operated to the advantage of the Soviet Union, in that whereas the African countries could always rely on a mass vote on any African issue supported by the Soviet Union, there could be no certainty of any measure pre-determining African votes on a Soviet issue at the United Nations. Nevertheless from 1958-1962 the majority of the African caucusing group has voted identically with the Soviet Union on 66.4% of issues,

3. Hovet, Op. Cit. p. 17.

4. See vote tally on selected East-West issues before the 15th, 16th, 17th and 18th Sessions of the General Assembly, as in David Kay, The New Nations in the United Nations, 1960-1967 (New York, 1970) pp. 226-241.

and differed with it on 16.3%. The proportion of agreement dropped from 69.3% in the 13th session and 74.0% in the 14th to 63.8% in the 15th and 63.1% in the 16th session.⁵

On some issues, the two sides had greater co-operation than on others. The high percentage of identical votes came specifically on African issues namely, colonialism, racialism, economic and social problems while the non-co-operative attitude of the African States have centred on issues relating to the cold war on which the Soviet Union and the Western powers are divided.

5. The issues and sessions in which the majority of the African group opposed the Soviet Union were:

Thirteenth Session

Procedural issue on including the question of Hungary on the Assembly Agenda.

Progress report of the Secretary General on UNEF Resolution on the flow of private capital into the economic development of underdeveloped countries.

Fourteenth Session

Votes and proposals concerned with membership on the Trusteeship Council.

Fifteenth Session

Procedural votes on acceptance of the credentials of the representatives of the Congo (Leopoldville).

Resolution on the Congo; one phrase stating that UN action should be taken "with due respect for the Congolese sovereignty".

Resolution on the Congo concerned with appointing a conciliation commission to assist Congolese leaders: several portions.

Two procedural proposals concerned with recommendations for the admission of Mauritania and Mongolia (See chapter one of this work, especially the discussion on the right of veto).

Resolution on the future of the trust territory of the Cameroons.

Resolution on the Cuban complaint against the U.S.

See, Thomas Hovet, Op. Cit. pp. 172-174.

III. BASIC ISSUES AT THE U.N.

Since the inception of the U.N., the organization had been basically preoccupied with European and non-African issues, as witnessed by the resolutions of the Security Council. Up till 1955 for example, there was no adopted Security Council resolution on any African issue. (figs. 1, 2). The Spanish and Greek questions, the Corfu Channel incidents, Iranian, Indonesian and Indian-Pakistan issues dominated the nineteen-forties, while the problems of armaments, Palestine, Hungary and Laos featured mainly in the nineteen-fifties. However, the process of decolonization which started in the early nineteen-fifties and had gathered great momentum towards the end of that decade diverted the attention of the world, and of the U.N. in particular, to this vast continent. Ever since then, African issues have often dominated the General Assembly and Security deliberations.

As shown in fig. 1, whereas for eight years (1946-54) none of the Security Council resolutions concerned Africa, in 1960 alone, out of a total of 28 resolutions by the Security Council, 22 were directly on Africa. With the exception of 1959 when the only resolution of the year was on Laos, no year has passed since 1955 without at least a Security Council resolution on Africa.⁶ Forty-two per cent of the sixteenth Annual Report of the Secretary General (1962) was devoted to African problems whereas the first annual report contained only two sentences in its sixty-six pages.⁷

6. See fig. 1, p. 162-64.

7. Hovet, Op. Cit. p. 4.

Figure 1.Check List and Subject Matters of Resolutions Adopted by
the Security Council on Africa 1946-1966.

<u>Year</u>	<u>Subject</u>	<u>Resolution No. and Symbol</u>	
<u>1946-1954</u>	-	-	-
<u>1955</u>			
14 Dec.	Admission of Libya	109 (1955)	S/3509
<u>1956</u>			
6 Feb.	Admission of Sudan	112 [1956]	S/3546
20 July	Admission of Morocco	115 [1956]	S/3624
26 July	Admission of Tunisia	116 [1956]	S/3629
<u>1957</u>			
7 March	Admission of Ghana	124 (1957)	S/3801
<u>1958</u>			
9 Dec.	Admission of Guinea	131 (1958)	S/4133
<u>1959</u>	-	-	-
<u>1960</u>			
26 Jan.	Admission of Cameroun	133 [1960]	S/4258
31 May	Admission of Togo	136 [1960]	S/4330
28 June	Admission of Federation of Mali	139 [1960]	S/4357
29 June	Admission of Malagasy	140 [1960]	S/4359
5 July	Admission of Somalia	141 [1960]	S/4374
7 July	Admission of Congo (Leopoldville)	142 [1960]	S/4377
23 Aug.	Admission of Dahomey	147 [1960]	S/4459
23 Aug.	Admission of Niger	148 [1960]	S/4460
23 Aug.	Admission of Upper Volta	149 [1960]	S/4461
23 Aug.	Admission of Ivory Coast	150 [1960]	S/4462
23 Aug.	Admission of Chad	151 [1960]	S/4463
23 Aug.	Admission of Congo (Brazaville)	152 [1960]	S/4464
23 Aug.	Admission of Gabon	153 [1960]	S/4465
23 Aug.	Admission of Central African Republic	154 [1960]	S/4466
28 Sept.	Admission of Senegal	158 [1960]	S/4543
28 Sept.	Admission of Republic of Mali	159 [1960]	S/4544
7 Oct.	Admission of Nigeria	160 [1960]	S/4549

<u>Year</u>	<u>Subject</u>	<u>Resolution No. and Symbol</u>	
<u>1960 contd.</u>			
1 April	Situation in South Africa	134 [1960]	S/4300
14 July	The Congo Question	143 [1960]	S/4387
22 July	The Congo Question	145 [1960]	S/4405
9 Aug.	The Congo Question	146 [1960]	S/4426
17 Sept.	The Congo Question	157 [1960]	S/4526
<u>1961</u>			
21 Feb.	The Congo Question	161 [1961]	S/4741
9 June	Angola Question	163 [1961]	S/4835
22 July	Complaint by Tunisia	164 [1961]	S/4882
26 Sept.	Admission of Sierra Leone	165 [1961]	S/4955
25 Oct.	Admission of Mauritania	167 [1961]	S/4969
14 Dec.	Admission of Tangayika	170 [1961]	S/5024
24 Nov.	The Congo Question	169 [1961]	S/5002
<u>1962</u>			
26 July	Admission of Rwanda	172 [1962]	S/5149
26 July	Admission of Burundi	173 [1962]	S/5150
4 Oct.	Admission of Algeria	176 [1962]	S/5174
15 Oct.	Admission of Uganda	177 [1962]	S/5179
<u>1963</u>			
24 April	Complaint by Senegal	178 [1963]	S/5293
31 July	Territories under Portugal	180 [1963]	S/5380
7 Aug.	Apartheid in South Africa	181 [1963]	S/5386
4 Dec.	Apartheid in South Africa	182 [1963]	S/5471
11 Dec.	Territories under Portugal	183 [1963]	S/5481
16 Dec.	Admission of Zanzibar	184 [1963]	S/5486

<u>Year</u>	<u>Subject</u>	<u>Resolution No and Symbol</u>	
<u>1964</u>			
2 June	Apartheid in S. Africa	190 [1964]	S/5761
18 June	Apartheid in S. Africa	191 [1964]	S/5773
9 Oct.	Admission of Malawi	195 [1964]	S/6005
30 Oct.	Admission of Zambia	197 [1964]	S/6033
30 Dec.	The Congo Question	199 [1964]	S/6129
<u>1965</u>			
15 March	Admission of Gambia	200 [1965]	
6 May	Rhodesia	202 [1965]	
12 May	Complaint by Senegal	204 [1965]	
12 Nov.	Southern Rhodesia	216 [1965]	
20 Nov.	Southern Rhodesia	217 [1965]	
23 Nov.	Territories under Portugal	218 [1965]	
<u>1966</u>			
9 April	Southern Rhodesia	221 [1966]	
14 Oct.	Admission of Botswana	224 [1966]	
14 Oct.	Admission of Lesotho	225 [1966]	
14 Oct.	The Congo Question	226 [1966]	
16 Dec.	Southern Rhodesia	232 [1966].	

Whereas at the first part of the First Session of the General Assembly, none of the resolutions passed directly concerned Africa, 20% of the resolutions passed in the sixteenth session dealt directly with African questions, and another 12 % were indirectly related to them.⁸ Certain scholars argue that the increased membership of the African States at the United Nations has been a major reason behind this new development. This in our view, is no more than part of the explanation. Certainly, at the General Assembly the force of the Afro-Asian group together with the Soviet bloc has greatly influenced the adoption of numerous resolutions.

In the Security Council, the membership of the African States which greatly influences the General Assembly is comparatively insignificant. As shown in Fig. 2, Egypt was the only African State and sat thrice on the Security Council during the period 1946-1954. There were five permanent members and the remaining six non-permanent members rotate yearly. The period 1955-58 saw no African representation at the Security Council yet resolutions were passed on African issues. The membership of the African countries at the Security Council up till 1965 had never exceeded two out of eleven, and when the seats at the Security Council was increased to fifteen in 1966, Africa has maintained not more than three members on the council. Irrespective of the low membership, in 1963, out of a total of eight resolutions passed by the council, seven were on Africa; and in 1970, out of a total of sixteen resolutions, eight were on Africa. (Fig. 2)

8. Ibid. See also, C. Legum, Pan Africanism. (New York) 1962, pp. 139-140.

Figure 2.**Check List of African Membership of the Security Council and of Resolutions Adopted on Africa (1946-1970).**

<u>Year</u>	<u>African Membership</u>	<u>Total Membership</u>	<u>Total No of Res. Adopted</u>	<u>On Africa</u>
1946-54	Egypt sat in 1946, 1949 and 1950	Six members plus the five permanent members officiated yearly	105	-
1955	-	11	5	1
1956	-	11	11	3
1957	-	11	5	1
1958	-	11	5	1
1959	1 (Tunisia)	11	1	-
1960	1 (Tunisia)	11	28	22
1961	2 (UAR, Liberia)	11	10	7
1962	2 (Ghana, UAR)	11	7	4
1963	2 (Ghana, Morocco)	11	8	7
1964	2 (Ivory Coast, Morocco)	11	14	5
1965	1 (Ivory Coast)	11	20	6
1966	3 (Nigeria, Mali, Uganda)	15	13	5
1967	3 (Ethiopia, Mali, Nigeria)	15	12	2
1968	3 (Algeria, Senegal, Ethiopia)	15	18	6
1969	3 (Zambia, Algeria, Senegal)	15	13	5
1970	3 (Sierra Leone, Zambia, Burundi)	15	16	8

The Soviet Union has vigorously supported and initiated certain of these resolutions even before the African countries became properly represented, and in doing so, laid the foundation for what could be regarded as effective co-operation to a large extent, on future activities.

IV. MUTUAL BENEFIT OF JOINT CO-OPERATION AT THE U.N.

Joint action by the Soviet Union and the African States at the U.N. is no doubt of great significance and benefits both sides. The structure of the United Nations is such that responsibility for maintaining international peace and security rests with the major powers. The Soviet Union is a major power and an important member of the United Nations, being one of the five permanent members of the U.N. Security Council. Co-operation and not confrontation with the Soviet Union, is an essential factor in the development of the African States, and weighs as heavily with them as co-operation with Britain, France America, Japan, Isreal or Germany. Truly, the bulk of the 1960 Security Council resolutions were on the admission of these African States into membership of the U.N., but even then, a veto by the Soviet Union of admission of an African member automatically suspends such application.⁹

9. The admission of Bangla Desh into the U.N. is being delayed by the veto of the Chinese People's Republic; Also, at the 15th Session, as a result of Soviet veto, the admission of Mauritania into the U.N. was delayed.

African diplomats are aware of the Soviet Government's sentiments over such issues as colonialism, racialism, economic development and aid and realise that the best arena to co-operate with the Soviet Union to achieve positive results on these issues is the U.N., where these questions are most debated. Apart from the fact that Soviet Union support on an African issue could exert a psychological impact on the behaviours of other world powers, the Soviet Union leads a powerful, dogmatic bloc of Socialist states at the U.N. whose system of voting and decision making are pre-arranged in conformity with Socialist principles and morals.¹⁰ This group at the head of which stands the dominating figure of the Soviet Union, when joined to the African group, constitutes a principal element of the group system in the United Nations political process.

Perhaps of equal importance to the Soviet Union is co-operation with the African countries.¹¹ The Soviet Union acclaims itself as the champion of the cause of the under-developed peoples, and has been one of the most vocal on principles of the U.N., such as self-determination of states and peoples,

10. The Soviet bloc is the only caucusing bloc in the U.N., whose members are bound to vote in accordance with group decisions.

11. In the cold war between the East and West, either side needs African support.

sovereign equality of states, non-intervention with particular emphasis on the new nations. Clearly, the Soviet Union would not like to lose this self-claimed position to the Chinese People's Republic which also claims to be the real champion of the cause of the oppressed people. Therefore co-operation with the African countries has to be maintained.

We shall examine certain aspects of co-operation between the Soviet Union and these African States on major issues at the United Nations.

V. COLONIALISM

The issue of colonialism and its liquidation had for decades been one of the most important issues on which both sides in the Soviet-African co-operation find agreement even though there are problems of agreement on the methodology and tactics in eliminating colonialism. In the history of the U.N. itself perhaps no session has done more than the 15th session of its Assembly to influence the issue of colonialism. Most African Heads of States who addressed the session stated their dissatisfaction with colonialism in Africa. President Nkrumah of Ghana called on the U.N. to require all nations that have colonies in Africa to grant complete independence to the territories still under their control;

"In my view possession of colonies is now quite incompatible with the membership in the United Nations",

he stated.¹²

12. U.N.G.A., O.R. 15th Session, 869th Meeting, 23 September, 1960.

Though the African leaders expressed the same feelings and desires, their speeches lacked concrete recommendations and initiatives that would help bring colonialism to an end. Mr. Nikita Kruschchev, the Soviet Prime Minister, launched a big offensive against colonialism during his speech at the U.N. General Assembly.¹³ In a lengthy declaration submitted by the Prime Minister, the Soviet Government strongly attacked colonialism, and asserted that the colonies want freedom, adding;

"In their path however, stand the selfish interests of imperialist circles in the West, hindering the fulfillment of the peoples' just aspirations."

The Soviet Union declaration in an apparent effort to attract the support of the African nations made sentimental references to the plight of the colonies.

"Is it possible to remain deaf to the groans of the people of Kenya, where for eight years the colonial authorities have been exterminating the local population after driving it into reservations, prisons and concentration camps... Who can remain calm in the face of the unending reprisals visited on the population of Nyasaland, Angola, Mozambique, Rhodesia, Ruanda-Urundi, South West Africa, Tangayika, Uganda..."¹⁴

The draft declaration 'demanded' that- 1. All colonial countries and Trust and Non Self-governing Territories must be granted forthwith complete independence and freedom to build their own national states ... 2. Similarly, all strongholds of colonialism in the form of possessions must be eliminated.

13. Ibid.

14. U.N.G.A. 15th Session, Doc. A/4502 23 September 1960.

3. The Governments of all countries are urged to observe strictly and steadfastly the provisions of the U.N. Charter and of this declaration concerning the equality and respect for the sovereign rights and territorial integrity of all states without exception...¹⁵

Mr. Kruschchev stated the desire that the draft declaration be distributed as an official document of the U.N. General Assembly. The General Committee recommended that the item proposed by the Soviet Union be placed on the agenda of the Session, but that it should be allocated to the First Committee which caters for political and security matters instead of the Plenary Session of the Assembly.¹⁶ Mr. Kruschchev stated the Soviet views on this.

"In our opinion, it is essential that the question should be discussed by the General Assembly in plenary meeting... The time is ripe for the total and final liberation of all the nations from colonial oppression, and this issue has now assumed particular gravity and urgency."¹⁷

This ordinary procedural matter brought extensive and sharp arguments at the General Assembly. The legal obstruction that both the Soviet Union and the African countries tried to evade, centred on rule 67 of the Rules of Procedure of the

15. Ibid.

16. U.N.G.A. 15th Session, Doc. A/L.312/Rev.1.

17. U.N.G.A. 15th Session 902nd Plenary Meeting, Agenda item 8.

Assembly which states:

"The General Assembly shall not, unless it decides otherwise, make a final decision upon any item on the agenda until it has received the report of a committee on that item."

The Soviet Union, as noted above, believe that this rule should be waived in the light of the importance and urgency of the item involved. The Soviet argument was strongly supported by the African countries,¹⁸

The Western contention was that the Soviet proposal to bypass the First Committee and include the item on the agenda of the Plenary Meeting of the Assembly was designed for propaganda purposes and not genuine. The United Kingdom representative stated:

"The memorandum is cast, I regret to have to say, in terms which are, all too clearly, designed purely for propaganda purposes."¹⁹

Some countries regard the procedural question as being of less vital importance than the problem itself.²⁰ After long hours of debate on procedural questions throughout the 902nd and part of the 903rd meetings, the Assembly finally decided by acclamation to allocate the item to the Plenary Session.²¹

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18. Mr. Quaison Sackey (Ghana) - U.N.G.A.O/R 15th Session, 902 Meeting.
 Mr. Felani (Libya) - ibid.
19. Mr. Ormsby-Gore (U.K.) - ibid.
20. Mrs. Meir (Israel) - ibid. Israel decided to vote alongside the Soviet-Afro proposal on this understanding.
21. U.N.G.A.O/R, 15th Session 903rd Meeting 13 October, 1960.

The co-operation achieved by the Soviet Union and the African States on this issue arose spontaneously rather than as the result of preconcerted efforts. The support which the African countries gave to the Soviet proposal was due to the fact that this issue is an African one and irrespective of the allegations by the Western countries of the Soviet Union's ulterior motive the African States believed that the item was worth being given prominence at the United Nations General Assembly rather than being left to the First Committee. In the words of the Guinean representative:

"(T)he African delegations are not afraid of propaganda, especially where the freedom of their peoples is concerned, and that anyone who believes that propaganda can have any effect on us is mistaken...On the contrary we think it shows a lack of understanding to refuse to consider a question of such importance in plenary session, on the mere pretext that it might be made the subject of propaganda. I say plainly that some delegations are prepared to make the question of the granting of independence to colonial peoples a subject of propaganda. Let them do so, as far as we are concerned, it is a crucial question for freedom in Africa and for peace in the world."

The Soviet Union however was satisfied that it had been able to get African support and contended at the outburst and accusations of the colonial powers and their allies. Mr. Kruschchev stated:

22. Mr. Toure Ismael (Guinea), Ibid., 902 nd Meeting.

"I am extremely glad about something else, namely that the representative of the United Kingdom, when he spoke here, sharply criticized my position. It is a great satisfaction to me that colonialists regard me as an enemy of the colonial system. That is a reward for me, and I take pride in it."²³

The suspicions read into the Soviet draft, and the objections to the language and operative paragraphs of the Soviet memorandum by the Western countries prompted the African states to team up with the Asian countries to draft a proposal. This diplomatic move by the African countries was to save the item in the later voting on it. The African States while basically in support of the requirements in the Soviet draft, realised the need to lobby for Western votes as well. It was calculated that although the Soviet bloc headed by the Soviet Union, while wishing to have its own draft adopted, would eventually vote alongside the African countries on their own draft - at least to avoid any diplomatic clash. Also, it was believed that it stood to reason that the Africans who were more affected by colonialism than the Russians, (though they claim to be the advocates of the colonial peoples) should be the main sponsor of such a resolution. This fact could be seen in the statement of the United Kingdom representative when he stated:

23. Mr. Kruschchev (U.S.S.R.), Ibid. Thorough examination of this speech confirmed our earlier suggestion that the Soviet Union was bent on being recognised as the champion of the course of the colonial peoples.

"On the subject of colonialism, my Government will listen with the greatest attention to the views of Africa and Asia...I am happy that the African and Asian members of the United Nations do not appear themselves to regard the Soviet contribution to our debates as a particular serious one, and that they intend²⁴ to put forward a draft declaration of their own".

Indeed, the draft declarations of the Soviet Union and the Afro-Asians differed in certain respects. While the Soviet draft was blunt and couched in peremptory terms, the Afro-Asian one was mild and appealing.²⁵ The preamble to the Soviet draft was lengthy and historical and lacked proper official formulation. These differences no doubt reflected the slightly different positions of the African countries and the Soviet Union on methodology and not on the basic issue of colonialism. However, it is interesting to note that the Soviet Union relentlessly continued to agitate for the adoption of its own draft resolution though not demanding that the Afro-Asian draft should be withdrawn. Its first reference to the Afro-Asian draft was on 7 December during the debate at the 939th meeting.

24. U.N.G.A.O/R. 15th Session, 925th Meeting.

25. For instance, the Soviet draft read "Accordingly, the State Members...proclaim the following demands" while the Afro-Asian text reads "And to this end Declares". U.N.G.A.O/R. 15th Session, annex. Vol. 2, Agenda item 87.

"With regard to the draft resolution submitted by the African and Asian States (A/L.325 and add. 1-6), the Soviet Union applauds the desire shown by the overwhelming majority of African and Asian delegations that measures should be taken at the fifteenth session of the General Assembly to advance the realization of that lofty goal - the complete liberation of the peoples of all colonies and dependent countries."²⁶

This indicated that the Soviet Union at the worst would vote alongside the Africans, and this was confirmed in an earlier statement whereby the Soviet representative considered the draft resolution 'favourable' even though, he further remarked, it was "inadequate and incomplete."²⁷ Both drafts according to the Soviet Union

"express a common platform and identical views on a number of vital questions."²⁸

The Soviet Union pointed out three basic defects in the Afro-Asian draft resolutions,²⁹ namely; that certain paragraphs were rather ambiguous, thereby giving room for different interpretations of their motives "even by the sponsors of the draft resolution"; secondly, while the Afro-Asian draft resolution referred to the need for the speedy end of colonialism and for immediate steps to be taken for the transfer of powers to Trust

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26. Mr. Zorin (U.S.S.R.) U.N.G.A.O/R. 15th Session, 939th meeting, 7 December, 1960.
27. Ibid. 945th meeting, 13 December 1960.
28. Ibid.
29. Apart from the Soviet Union, some other countries also found defects. See Mrs. Rossel (Sweden) U.N.G.A.O/R. 15th Session, 946th meeting.

and non-Self-Governing Territories and other territories still under colonial rule, no precise target date for the grant of independence to the colonial countries was indicated, and missing also were specific instructions for the powers responsible for these colonies on what to do. Lastly, the Afro-Asian draft erroneously omitted a provision to the effect that the Assembly consider the question of implementation of this declaration at its next session.³⁰

The Soviet Union pointed out that at the Second Conference of independent African States, held at Addis Ababa in June 1960, a resolution was adopted urging the colonial powers to fix dates in conformity with the will of the people for the immediate attainment of independence by all non-independent countries and to communicate these dates to the people concerned.³¹ Apart from the O.A.U. document quoted, the Soviet representative also quoted other African sources to buttress his argument.³² At this stage, it was apparent that amendments would be submitted to rectify these Soviet objections. The first amendment called upon the powers concerned to transfer powers to the colonies by the end of 1961 at the latest, and the second one

30. Mr. Zorin (U.S.S.R.) U.N.G.A.O/R. 15th Session, 945th Meeting, paragraphs 113, 114, 115, 116.

31. Ibid. paragraph 121.

32. Ibid. paragraphs 120, 122, 123.

called on the Assembly to consider the question of the implementation of this resolution at its sixteenth regular session.³³ The logic behind these amendments (which were also missing from the Soviet Union's document A/L.323) could be seen as follows.

During the initial formulation of the Soviet proposal, it was probably envisaged that its passage at the General Assembly would meet with difficulties, and because the proposal basically appealed to the African aspirations as well as to those of other countries affected by colonialism, the tendency was that a moderate proposal would be submitted by the African countries. The Soviet Government as well tactically timed the introduction of the draft resolution to the General Assembly for a year in which there was a great influx of African States to the U.N. It was assumed that because of their new membership, these countries might put up a loose, compromising proposal so as not to offend their former colonial masters.

Furthermore, to give more prominence to the Soviet delegates, it was decided to divide the attack on colonialism at the U.N. into various stages.³⁴ After all, the more the Soviet delegates

33. U N. Doc.A/L.328, 13 December 1960. Amendment to U.N. Doc.A/L.323.

34. Mr. Zorin stated at the 939th meeting while concluding his speech. "The Soviet delegation reserves the right to speak at a later stage and explain its views on the specific provisions of the Afro-Asian draft."

speak, the greater chances they have to convince the African and the affected countries of the sincerity of their support. The more popular it becomes also. It may be recalled that the Soviet representative at the 939th meeting demanded that the Soviet draft should be put to the vote first.³⁵ In fact, Mr. Zorin quoted rule 93 of the Rules of Procedure to ask for this right. This rule no doubt made the Soviet draft liable to being first voted on, but the Soviet reminder only confirmed our argument that there had been pre-arranged stages of the tactics of the draft, and a hitch somewhere would set back the strategy. That the Soviet amendments should have been left towards the tail end of the debate also testifies to the intention of the Soviet delegate to embarrass the West throughout the debate and as well arouse African sentiments and feelings throughout.

At the end of the debate on Agenda item 87 which started on 28 November 1960³⁶ and ended on 14 December 1960³⁷ there were eighteen plenary meetings of the Assembly solely on this item; with 78 Member States taking their turns on the rostrum (the actual figure would be 80 representatives, but we have aligned Byelorussian and Ukrainian delegates to the Soviet Union

35. U.N.G.A.O/R. 15th Session, 939th meeting.

36. U.N.G.A.O/R. 15th Session, 925th Plenary meeting.

37. U.N.G.A.O/R. 15th Session, 946th Plenary meeting.

delegates since they both form part of the Soviet Union and expressed identical views with the later). There were various clashes between the Soviet delegates and some of those of the colonial powers, and this gave room for some delegates to speak on several occasions.³⁸ Whereas the Soviet and African delegates differed on various matters, both sides diplomatically refrained from attacking one another - at least from doing so directly.

In all, 20 representatives of a total of 24 African States spoke at these meetings (our statistics include South Africa). All the Eastern European countries spoke as well. The next stage of the debate was voting on the drafts before the Assembly, namely: the Soviet draft declaration;³⁹ Honduras revised draft resolution;⁴⁰ Guatemala amendment to document A/L.323;⁴¹ U.S.S.R. amendment to document A/L. 323;⁴² and finally, draft resolution submitted by forty-three Powers.⁴³

38. For instance, the 925th Plenary meeting witnessed the U.S.S.R. and U.K. clashing; 938th meeting, U.S.S.R. and Belgium; 926th meeting, U.S.S.R. and Portugal; 945th meeting, France, Spain replied to attacks by the U.S.S.R.

39. U.N.G.A. Doc. A/4502.

40. U.N.G.A. Doc. A/L324/Rev.2.

41. U.N.G.A. Doc. A/L.325.

42. U.N.G.A. Doc. A/L.328.

43. U.N.G.A. Doc. A/L.323 and add. 1-6.

There was a last effort by the Ghanaian delegate to persuade the Soviet Union to withdraw its amendments which the Soviet representative regretted could not be done because of reasons earlier stated.⁴⁴ The vote on the Soviet draft was taken in parts. The first part was the one which reads:

"the States Members of the United Nations solemnly proclaim the following demands:"

and including the following three paragraphs.⁴⁵ In a vote by roll-call, that part of the Soviet draft was rejected by 35 votes to 32 with 30 abstentions.⁴⁶ This result was no surprise in view of the opinions already aired by representatives at the meetings, but it is significant to note the diversities in the African votings. Eleven African States

44. Mr. Quaison-Sackey (Ghana) UN.G.A.O/R. 15th Session, 947th Meeting;
Mr. Zorin (U.S.S.R.) *ibid.*

45. UN.G.A. Doc.A/4502 of 23 September 1960.

46. UN.G.A. 15th Session, Plenary Meeting (947th). 14 December 1960, para. 29.

IN FAVOUR: Morocco, Nepal, Poland, Rumania, Saudi Arabia, Sudan, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Yugoslavia, Afghanistan, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chad, Cuba, Czechoslovakia, Ethiopia, Ghana, Guinea, Hungary, India, Indonesia, Iraq, Jordan, Lebanon, Liberia, Libya, Mali.

AGAINST: Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Phillipines, Portugal, Spain, Sweden, Thailand, Turkey, United Kingdom, United States of America, Uruguay, Argentina, Australia, Belgium, Brazil, Canada, Chile, China, Columbia, Costa Rica, Denmark, El Salvador, France, Greece, Honduras, Iceland, Ireland, Isreal, Italy, Japan and Luxembourg.

ABSTAINING: Mexico, Nigeria, Pakistan, Paraguay, Peru, Senegal, Somalia, Tunisia, Upper Volta, Venezuela, Austria, Bolivia, Burma, Cambodia, Cameroon, Central African Republic, Congo (Brazaville), Congo (Leopoldville), Cyprus, Dominican Republic, Ecuador, Federation of Malaya, Finland, Gabon, Guatemala, Haiti, Iran, Ivory Coast, Laos and Madagascar.

voted in favour with one against and twelve not able to make up their minds. This no doubt confirmed the sympathy of the African States for the Soviet 'demands'. The fact that twelve abstained is in diplomatic parlance an acceptance of the provisions of the draft itself but with reservations as to certain defects in it. Such massive abstention only leaves observers in doubt as to what were the real defects, and the guess could be anybody's. Naturally, the Soviet bloc voted massively for the Soviet draft. The reason for the vote of the only African State against the Soviet draft is hard to find. At least Mr. Kaka of the Niger gave no hint of any opposition to the paragraphs of the Soviet draft during his speech at the 934th meeting.⁴⁷ However, the suggestion of the possibility that the African votes had been pre-arranged should not be ruled out. Surprisingly, it should be remarked that the Niger delegate voted for the remaining part of the Soviet draft which was a direct attack on colonialism and the colonial powers.

The vote after the roll-call showed that the remaining part of the draft declaration was rejected by 43 votes to 25 with 29 abstentions.⁴⁸ Again, the number of African States abstaining was more than those in favour. While fourteen

47. Mr. Kaka (Niger) UN.G.A.O/R. 15th Session, 934th Meeting. 3 December, 1960.

48. UN.G.A.O/R. 15th Session, 947th Meeting, paragraph 30.

states abstained, ten voted in favour and none against. The African States tried as much here to show their efforts not to be involved in the cold war between the East and the West. This part of the Soviet draft condemned colonialism savagely and attacked the colonial powers accusing them of waging "murderous wars against peoples" and committing genocide in their colonies.⁴⁹ The African countries by their votes while detesting colonialism and the colonial powers would have preferred their personal attack on the evils of this system rather than the Soviet Government doing this. Here, the two sides differ again not on the basic points but on methods.

The vote on the amendment by the U.S.S.R. (A/L.328) to the draft resolution of the 43 power nations which would have been paragraph 8 fixing the end of 1961 as the target towards ending colonialism was next taken. Before doing so, as pointed out earlier, efforts by the African side to effect the withdrawal of this amendment by the Soviet Union here was unavailing. Paragraph 8 was rejected by 47 votes to 29 with 22 abstentions.⁵⁰ There were eleven African States which supported the amendment, six voted against and eight abstained. The trend of voting

49. UN.G.A.Doc.A/4502.

50. UN.G.A.O/R. 15th Session, 947th Meeting, Paragraph 31.

changed slightly, though the number of African States voting alongside the Soviet Union remained unchanged. The largest number to oppose the Soviet Union was seen in this vote, and these votes decreased the number of abstentions.

One possible fact here is the scepticism of the African States to the practicability of the Soviet target of 1961. It should be noted that the six Noes included that of the Union of South Africa. Of the three rounds of votings, the number of the African States voting alongside the Soviet Union were more for the first time than those abstaining, which had been the reverse in the former rounds - a confirmation that the Soviet Union carried a constant substantial percentage of the African votings.

The next vote was the second amendment of the Soviet Union which would have been paragraph 9 of the 43 power nation draft. The result of the vote was forty-one in favor, thirty-five against and twenty-two abstentions,⁵¹ Although the Soviet amendment carried the majority, it could not be adopted having failed to obtain the prescribed 2/3 majority. The overwhelming majority of the African States voted alongside the Soviet Union. Sixteen voted for, three against and five abstained. While the majority of the African States were reluctant to vote with the Soviet Union on its own draft declaration, the last two amendments to their own draft

51. UN.G.A.O/R. 15th Session, 947th Plenary Meeting.

resolution received favourable support from the majority of the African States. It may be assumed, therefore, that there was the possibility of the African States accepting the Soviet amendments but for their co-sponsors who by their votes confirmed their opposition to these amendments.

The long debate on colonialism sparked off by the Soviet Union and which aroused so much interest and tension at the 15th Session of the General Assembly, was eventually ended with the vote on the last draft resolution this time by the 43 power nations (A/L.323 and add.1-6). The Afro-Asian draft was adopted by 89 votes to none, with nine abstentions.⁵²

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52. ibid; IN FAVOUR: Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Luxembourg, Madagascar, Mali, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Rumania, Saudi Arabia, Senegal, Somalia, Sudan, Sweden, Thailand, Togo, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Albania, Argentina, Austria, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Canada, Central African Republic, Ceylon, Chad, Chile, China, Colombia, Congo (Brazzaville), Congo, (Leopoldville), Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, El Salvador, Ethiopia, Federation of Malaya, Finland, Gabon, Ghana, Greece, Guatemala, Guinea. AGAINST: None.
- ABSTAINING: Portugal, Spain, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Belgium, Dominican Republic, France.

Although the two Soviet amendments to this 43 power draft were rejected, the Soviet Union cast its three votes⁵³ for the Afro-Asian resolution. Also, the entire Soviet bloc voted in support of the draft resolution. In actual fact, the position of the Soviet Union differed from that of the other countries who abstained during the voting when one considers the fact that the original proposer of this item was the Soviet Union, and though there were slight differences in the Soviet proposal and that of the Afro-Asian countries, abstention by the Soviet Union which would have definitely weakened the wide support the 43 power draft enjoyed could have been a contradiction of the Soviet proposals. Nevertheless, the Soviet Union in view of the defects it pointed out in the Afro-Asian draft could as well have abstained on these grounds. After all, the colonial powers that did abstain claimed they were not opposed to the Afro-Asian draft as such, but withheld their votes on grounds of incomplete aspects of the draft.⁵⁴

53. The votes of Byelorussia and Ukrainia were added to that of the Soviet Union.

54. Mr. Ormsby Gore (U.K.) - UN.G.A.O/R. 15th Session, 947th Meeting, para. 48;
 Mr. Garin (Portugal) *ibid.* para. 103.
 Mr. Wadsworth (U.S.A.) *ibid.* para. 144.

The basic point was that the Soviet Union was not prepared to risk its self-seeking interest in Africa and in other new nations at the expense of differences of opinions in both draft resolutions.

Perhaps one vital reason as well was best explained in the statement of the Soviet representative after the vote:

"The whole world can now see who in fact is in favour of eliminating the shameful colonial system and who is opposed to it."⁵⁵

An assertion which was intended to show the Soviet Union as the real friend of the African nations.

VI. STEPS TOWARDS MAKING RESOLUTION 1516(XV) WORK.

The rejection of the proposed amendments by the Soviet Union to the Afro-Asian draft resolution (A/L.323) at the 15th Session was no deterrent to the Soviet Union's insistence that the item entitled "Situation with regard to the implementation of the General Assembly Resolution 1516(XV) of 14 December 1960" should be included in the agenda for the sixteenth session. This was done in a telegram of 28 August 1961.⁵⁶

When the debate resumed on this issue, which had become item 88 of the 16th session, a procedural clash between Nigeria and Poland was quickly averted by the representative of Ghana

55. Mr. Zorin (U.S.S.R.) UN.G.A.O/R. 15th Session, 947th meeting, para. 78.

56. UN.Doc.A/4859.

who called for an adjournment of the debate in order for the African States to reach a general agreement.⁵⁷ The point in question was whether to give priority for item 22 - "Africa: a United Nations programme for independence and development", over item 88, or that the two items should be jointly considered. The Polish delegate contended that the two items should be jointly considered.⁵⁸ While Nigeria wanted item 22 to be first considered.⁵⁹ The Nigerian representative stated:

"We must be accepted as the authorities on matters pertaining to Africa. We are the area specialists in matters pertaining to Africa - we know our environment - and I have said here, over and over again, that Nigeria does not want Africa to be dragged into the cold war."

It was essential to avert such an irrelevant disagreement between the African States and the Soviet bloc for the sake of joint co-operation on this topic. Nigeria eventually withdrew its request for priority and when the debate resumed, the move was welcomed by the Soviet delegate who in his speech referred to the Declaration on the granting of Independence to Colonial Countries and Peoples as the death sentence of colonialism, but that concerted efforts by all were needed to carry out the execution of the sentence.⁶⁰ A draft resolution was submitted by the Soviet Union on implementing the Declaration.⁶¹

57. Mr. Quaison-Sackey (Ghana) UN.G.A.O/R. 16th Session, 1047th meeting, para. 123.

58. Mr. Winiewicz (Poland) *ibid.* para. 98.

59. Mr. Wachuku (Nigeria) *ibid.* paras. 91, 92.

60. Mr. Lapin (U.S.S.R.) UN.G.A.O/R. 16th Session, 1048th meeting, para. 75.

61. UN. Doc. A/L.355.

Unlike the Soviet draft resolution at the 15th session, this draft resolution was less forceful and stern. It 'called' for the immediate implementation by all states administering territories of the UN Declaration. It again repeated a target date for liquidating colonialism as the end of 1962, extending the deadline of the 15th session amendment (Doc.A/L.328) to the Afro-Asian draft resolution by a year. The Soviet draft also called for the opportunity of the indigenous population to exercise all democratic rights and freedoms, and also the establishment of a Special Commission to conduct a full and comprehensive inquiry into the situation with respect to implementing the declaration and for measures for carrying it into effect.⁶²

The new target for the end of 1962 might have been borrowed from the speech made by the President of Ghana to the Belgrade Conference of September 1961 when he stated:

"I propose that the Conference approve my proposal that by 31 December 1962 all colonialist powers should leave Africa."

This statement was quoted by the Soviet delegate at the 16th session who tried to refute the allegations of propaganda as being the aim for the set target.⁶³ As it was at the 15th session, the Afro-Asian countries proposed a draft resolution on item 88.⁶⁴ Again there were distinct contrasts in certain

62. Ibid.

63. Mr. Lapin (U.S.S.R.) UN.G.A.O/R. 16th Session, 1066th meeting. paras. 68, 69.

64. UN.Doc.A/L.366 and add 1-3.

paragraphs of these draft resolutions. The Afro-Asian draft was silent on the exact date to liquidate colonialism. The 38 power draft also called for the establishment of a Special Committee of 17 members to be nominated by the President of the General Assembly, and the Special Committee was requested to examine the application of the declaration and make suggestions and recommendations as to the progress and extent of the implementation of the declaration.⁶⁵

There was much pressure from the African States⁶⁶ to the Soviet Union to withdraw its own draft resolution. The African countries expressed appreciation to the Soviet Union for the interest and initiative it had manifested in the problem of the speedy liquidation of colonialism. The Soviet Union "in a spirit of co-operation" responded to the appeals of the representatives, and Nigeria did not press its own draft to a vote.⁶⁷ However, similar amendments to the UN.Doc.A/L.328 of 1960 were made to the 38 power draft. A fixed deadline of 1962 was to be proclaimed as the year of the elimination of colonialism.

65. *ibid.*

66. Mr. Gebre-Egzy (Ethiopia) UN.G.A.O/R. 16th Session, 1066th meeting. para.

67. Mr. Ngileruma (Nigeria) *ibid.* para. 107.

The second amendment requested the Special Committee to examine the application of Resolution 1514(XV) and to make suggestions and recommendations on the immediate application of the Declaration and that the completion of its implementation should be reported to the 17th session.⁶⁸ The insistence of the Soviet Union in not withdrawing these amendments might have been due to the support given to similar amendments in the previous year by the African countries. It will be recalled that the number of those abstaining went down considerably, though some of these votes increased the number of those voting against. But as pointed out, those in favour remained constant, at least in the first amendment.

In the second amendment, the majority of the African votes (16 in all) were in support of the draft paragraph 9. Both opposition and abstention greatly lessened. No doubt therefore the Soviet Union enjoyed the prospect of seeing the issue of colonialism in the next session of the General Assembly. The first Soviet amendment was defeated. Only 19 favoured it against 49 and 35 abstained.⁶⁹ Analysis of the African votes confirmed that it was no use backing a proposal which in all likelihood was impracticable. Almost a year had passed since the adoption of the UN Resolution 1514(XV), and counting the failures of the resolution in terms of newly independent colonies

68. Mr. Lapin (U.S.S.R.) *ibid.* para. 110.

69. UN.G.A.O/R. 16th Session. 1066th Meeting, 27 November 1961. para. 147.

was enough hint of a more sincere approach to proposals made at the United Nations. Only Tanganyika was scheduled to gain its independence in 1961,⁷⁰ and this fact was not reflected upon by the declaration. Only six countries voted for the amendment, two against and an enormous majority of twenty abstained. The votings gave the indication that if in 1960 the African States were sceptical, the idea was totally rejected in 1961. The second amendment was equally rejected by 36 votes to 22 and 35 abstentions.⁷¹

The 38 power draft was next voted on. It was adopted by 97 votes to none with 4 abstentions.⁷² The Soviet Union and the entire Soviet bloc voted in favour of the 38 power draft.

70. David Kay, The New Nations in the United Nations (New York, 1970), p. 172.

71. UN.G.A. 16th Session, O/R. 1066th Meeting, para. 148.

72. IN FAVOUR: Saudi Arabia, Senegal, Sierra Leone, Somali, Sudan, Sweden, Syria, Thailand, Togo, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Canada, Central African Republic, Ceylon, Chad, Chile, China, Colombia, Congo (Brazaville), Congo (Leopoldville), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Federation of Malaya, Finland, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Isreal, Italy, Ivory Coast, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Luxembourg, Madagascar, Mali, Mauritania, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Phillipines, Poland, Rumania.

AGAINST: None

ABSTAINING: South Africa, United Kingdom of Great Britain and Northern Ireland, France.

PRESENT AND NOT VOTING: Portugal.

The one vote that aroused interest was that of the United States of America, who had always abstained or voted against drafts on colonialism. There is no doubt about the contention that the Soviet Union strategy played a part in influencing American decisions. As pointed out earlier, Soviet tactics were to keep the issue of colonialism alive in the sessions of the General Assembly and woo African support to its side.

Another reason admissible for the support the United States of America gave for the 38 power draft was the efforts of the African/Asian group to involve other countries outside their own group, unlike 1960 when they ignored non Afro/Asian countries. The Soviet Union in particular was not pleased that it was not consulted during the 1960 43 power draft of the Afro/Asian group. According to the Soviet views, the African/Asian group refused to consult other countries to hear their views simply because they were afraid that such consultations might eventually divide the group itself. The Afro/Asian basic concern during their discussion, according to the Soviet Union, was how best to please all the various groups at the Assembly - hence the resolution dodged vital points of condemning the West.⁷³

73. E.A. Pozdniakov, Molodiye Gosudarstva Azii i Afriki v OON. (The Young States of Asia and Africa at the U.N.O.) (Moscow, 1971), p. 101.

The Soviet Union and the African States could not possibly agree on the radical views often proposed by the Soviet Union for liquidating colonialism. Each side maintained differing views on the practical aspects of liquidating colonialism. An objective analysis of both arguments tends to justify the African stand. Colonies still exist in Africa and this is so notwithstanding scores of resolutions in the archives of the United Nations. At the same time, the enormous contribution of the Soviet Union on this subject aroused the aspirations of the Africans and other affected nations, and indeed, the concern of non-affected nations. Colonialism no doubt at the United Nations had kept the world organization lively irrespective of the tongue lashing and accusations among the world powers.⁷⁴ From all these attacks, the African countries have always inconveniently stayed aloof, not coming out to support either side.

In paragraph 3 of the resolution 1650(XVI), a Special Committee of seventeen members was to be nominated by the President of the session,⁷⁵ and in keeping with this, five

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74. Undoubtedly worried about some of the Soviet allegations against it, the representative of the U.S.A. in a letter dated 25 November 1961 (Doc.A/4985) to the President of the 16th session, replied to some of the Soviet attacks and accused the Soviet Union as an imperialist and colonial power as well.
75. The initiator of the establishment of a Special Committee was the Soviet Union as well: UN.Doc.A/4889 of 27 September 1961, para. 58.

countries from Africa were represented in the Committee, the Soviet Union, Poland and Yugoslavia being members as well, three from Asia, two from Latin America, and the remaining countries were the United Kingdom, the United States and Australia.

After more than ten years since the Soviet Union introduced the item on Granting of Independence to the Colonies to the UN. General Assembly, it has remained more or less a permanent topic at every session of the General Assembly, and it will remain so for an unpredictable length of time. And undoubtedly, the African States will keep remembering the Soviet Union as the initiator of the efforts to liberate the colonies.

VII. LEGAL EFFECTS OF RESOLUTIONS 1514(XV) AND 1650(XVI).⁷⁶

The issue of decolonization which started basically at the 15th session and occupied a good part of the 16th session has ever since remained a permanent item at virtually all the sessions of the General Assembly and the Security Council till today. One of the most important results of these resolutions was the establishment of a Special Committee on the situation with regard to the implementation of the

76. On the legal significance of UN. resolutions in general see Chapter One of this work.

Declaration on the Granting of Independence to Colonial Peoples and Colonies. With the birth of this committee, a problem child had been born for the UN to nurse.⁷⁷

The situations in Rhodesia, Namibia, South Africa and the Portuguese colonies are yet to be solved, and no doubt the United Nations through the Security Council, the General Assembly, the International Court of Justice will continue to strive towards resolving the legal and moral complications involved in these situations. Little progress has so far been achieved.⁷⁸ However, an important fact which the efforts of the UN has been able to establish is total rejection of colonialism as a system.

77. See for example: UN.G.A. 17th Session, Plenary Meetings 1167-1178, 1194-1196; *ibid.* 18th Session, Plenary Meetings 1241, 1255; *ibid.* 19th Session, Agenda item 21; *ibid.* 20th Session, Plenary Meetings 1357, 1367, 1368, 1375, 1385-1390, 1398-1400, 1407, 1408; *ibid.* 21st Session, Plenary Meetings 1422, 1450, 1468, 1485, 1487-1492, 1500; *ibid.* 23rd Session, Plenary Meetings 1707, 1708, 1725, 1730, 1731, 1743, 1744; *ibid.* 24th Session Plenary Meetings 1764, 1772, 1773, 1826, 1853, 1871, 1882; *ibid.* 25th Session, Agenda item 23, Meeting 1843; UN.G.A.O/R. 25th Session, Suppl. No.22/A/8022/Rev.1. UN.G.A.O/R. 26th Session, Suppl. No.24/A/8424.

Of the seventeen original members of the Special Committee appointed in accordance with the 1961 Assembly resolution by the President of the Sixteenth session, five African States and the Soviet Union were included, and when at the seventeenth session seven additional members were appointed, the African figure was increased to seven by the addition of two African States.

78. Only on August 1, 1972 did the Security Council agree to the nomination of a special representation to continue negotiations with South Africa on Namibia.

Documents of the United Nations have on several occasions called for the implementation of the declaration on granting of independence to the colonies. UN General Assembly Resolution 2105 (XX) of 20 December 1965 recognized as just wars, the wars being waged by the liberation movements in the colonies and called on all countries to give material and moral support to the National Liberation Movements of the colonial territories.⁷⁹ At its 20th session, the UN General Assembly by Resolution 2105 (XX) recognized the legitimacy of the struggle by the peoples under colonial rule to exercise their right to self-determination and independence and invited all States to provide material and moral assistance to the national liberation movements in colonial territories.

Resolution 2107 of December 21, 1965 on reports submitted by the Special Committee on the situation with regard to the implementation of Resolution 1514 (XV) relating to the territories under Portuguese administration urged members of the UN to take the following steps separately or collectively.

- (a) Break off diplomatic and consular relations with Portugal or refrain from establishing such relations.
- (b) Members should close their ports to all vessels flying the Portuguese flag or in the service of Portugal.

79. UN.G.A.O/R. 20th Session, Suppl. No.14/A/6014.

- (c) To prohibit their ships from entering any ports in Portugal and its colonial territories.
- (d) To refuse landing and transit facilities to all aircraft belonging to or in the service of the Government of Portugal.
- (e) To boycott all trade with Portugal.⁸⁰

The resolution also requested all nations to stop shipments of arms to Portugal.

All these UN resolutions form legal bases for the renunciation of colonialism. Resolutions 1514(XV) and 1650(XVI) fall into the group of those important UN resolutions, which, as appears from the virtually unanimous votes of Member States, express an understanding among States as to the acceptance of new principles of international law. Some of these include resolution 1904 (XVIII) Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963; resolution 1962(XVIII) of 13 December 1963 entitled Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space.

Joint co-operation by both the Soviet Union and the African States at different stages during the debate on these resolutions have contributed to the possibility of their being adopted as documents of the UN.

80. UN.G.A. Resolution 2107(XX).

VIII. NON-COLONIAL ISSUES AT THE UN. ENLARGEMENT OF UN

MAIN ORGANS

At the 15th session of the UN General Assembly, Mr. Kruschchev, the Soviet Prime Minister called for the formation of an Executive Organ to replace the post of the Secretary-General of the United Nations. Such a change was necessary in the Soviet view because of the feeling that Mr. Dag Hammarskjold was not serving the interests of the organization but that of the West. In an apparent effort to attract the support of the developing countries, the Soviet Union requested further that the Executive Organ should comprise representatives of the East, the West and the third world.⁸¹ The formula was coined in the now famous 'troika' principle.⁸² The troika formula received no support from the African countries most of which felt the need for other important changes rather than in the form and composition of the Secretariat.

The 1946 gentlemen's agreement which geographically distributed the six non-permanent seats on the Security Council excluded Africa and Asia as geographical entities. Apart from the Security Council, the African States wanted to be properly represented on other main organs of the United Nations

81. Mr. Kruschchev (U.S.S.R.) UN.G.A.O/R. 15th Session, 882nd meeting.

82. Troika in Russian means 'three'.

namely the Economic and Social Council, the General Committee and other organs having to do with matters related to Africa. The Conference of Independent Countries of Africa which was held in 1963 at Addis Ababa called on its members to strive for better representation of Africa as a region at the UN.⁸³

The first session of the African Council of Ministers adopted a resolution which recalled that in view of the increased membership of Africa at the UN., (32 States in 1960) it was necessary to expand the main organ of the United Nations. It called on all the members of the UN and especially the five permanent members of the Security Council, to see to the implementation of its request and emphasized that any act by any country aimed at neutralizing the African demands would be regarded as an unfriendly act.

The African Members of the United Nations have always been disappointed at the way issues affecting their continent have been turned into objects of the cold war between the East and the West, and feel that better representation would afford them better opportunities for dealing with these issues. To better understand this argument, it is worthwhile examining the structures and functions of the main organs of the United Nations.⁸⁴

83. Conference of African States, 22-25 May, 1963. Addis Ababa.

84. For detailed studies see - Repertory of Practice of United Nations Organs (New York, 1955), Volumes 1 and 2; S.D. Bailey, The United Nations (London, 1963).

The General Assembly is the only principal organ of the UN on which all members are represented. Opponents of the legal significance of General Assembly resolutions have stated that since the main functions of the General Assembly are basically those of initiative, of discussion, of study and recommendation, the General Assembly could only make recommendations on general matters, and these are mere proposals which carry no obligations.⁸⁵

Paragraph 2 of Article 18 of the Charter stated that decisions of the General Assembly on important questions require a two thirds majority of the members present and voting, and paragraph 3 requires an ordinary majority of those present and voting. The Security Council on the contrary has limited membership - five permanent members namely - Britain, China, France, U.S.A., U.S.S.R., and other six non-permanent members elected for a two year term each, and not eligible for immediate re-election. The functions of the Security Council are executive, and it is charged with the maintenance of security and peace in the world. Its decisions are binding upon all members though States have often violated them. Decisions of the Security Council require an affirmative vote of nine members, including the concurring votes of all the permanent members.⁸⁶

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85. Oppenheim's International Law, Op. Cit. p. 424; In chapter one of this work, the legal importance of General Assembly resolutions was discussed and it may suffice to add that it is wrong to assert that the General Assembly decisions in general do not go beyond being mere recommendations.
86. Since the inception of the UN in 1946 till 1965, the Security Council had 11 members, and decisions of the Council required an affirmative vote of seven members, including the concurring votes of the five permanent members. However, with the amendment of Article 27 of the Charter in 1966 the size of the membership of the Security Council rose to 15, with nine affirmative votes needed to make decisions.

However, a vote in the Security Council does not in every case lead to a decision. For example, in the case of insufficient affirmative votes, or if one of the permanent members exercises the veto, the proposal is not adopted, and no decision is taken. The institution of permanent membership of the Security Council, together with the right of veto enjoyed by each permanent member, has been a major point of disagreement between the majority of the members of the UN, and the privileged members. The majority of the UN members feel that the institution of veto contradicts the principle of sovereign equality of states.

The African States are very vocal on this topic, and their demands for changes in the main organs of the UN have not met with favourable acceptance by the Soviet Union. The Soviets accuse the Afro-Asian States of being blindfolded by their desires to get enough representation and thereby conniving with the Western countries to deprive the Eastern countries of some of their own seats on these organs, and thereby contravening themselves, those principles for which they are fighting.

"From 1952, the Western countries, led by the United States of America have utilized their majority at the General Assembly to attempt to replace certain Eastern European seats with those countries which have nothing to do with that region (in 1958 and 1959, Japan; in 1957-1963, Phillipines; in 1965, Malasia). By these acts," continued the accusation, "they have violated the principle of equitable geographical representation. These violations would have been impossible but for the support given to the West by the Majority of the Afro-Asian countries and the placing of their narrow group interests above those of the Organization."

Sovietologists would easily understand the main reason for the Soviet Union wanting to retain the veto right. The Communist Society itself is controlled and ruled under the principle of democratic centralism. This implies decisions affecting the majority being taken by a few privileged people. The latter, comprise a minority but with self-imposed authorities. With this understanding in mind, it is therefore not difficult to understand the Soviet views on opposing the Africans call for the abolition of the institution of veto. Moreover, the Soviet Union has long realised the significance of the veto right - being the only permanent member of the Security Council from Eastern Europe. At the Paris Peace Conference in 1946, Molotov who headed the Soviet delegation, had this to say on the veto.

"Veto prevents an agreement of three or four of the big powers to conspire against one of them".⁸⁸

According to him, the unanimity principle was superior to the majority vote.⁸⁹

The differences of opinion as expressed by both sides depict the attempt to preserve their own interests. More interesting however is the fact that both sides extend to hide under legal covers to argue their points. According to the

88. Molotov, Rechy Na Paryskoi Konferentsii (Speeches at the Paris Conference) as in Grzybowski, Soviet Public International Law, Op. Cit. p. 359.

89. Ibid.

African States' argument, in the true sense of the principle of equality of member states, all members must have equal votes, and should be entitled to contribute to matters affecting world peace and security.

The African States recognise the values of the permanent members of the Security Council, but feel that in those cases (and they are many), where the members of the Security Council have proved incapable of maintaining world peace and security, there existed the tendencies for individual members of the UN to take unilateral action in maintaining peace and security. Therefore, the General Assembly should be able to take collective measures which on the failure of the Security Council would maintain peace and security.

The Soviet Union argued that this Afro-Asian proposal was a gross violation of article 24 of the UN Charter which stated that the primary responsibility for the maintenance of international peace and security rested with the Security Council,⁹⁰ and article 39 which confirmed that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken.⁹¹ On the assertion by

90. UN.Doc.A/5686 of 31 December 1963, para.10; Pozdniakov, Op. Cit. p. 75.

91. Ibid.

the African countries that the institution of veto contradicts the principle of sovereign equality, Soviet jurists argue that

"the Sovereign equality of the UN members finds expression in the fact that each country has only one voice. The fact that some decisions of the United Nations organs are made by majority vote does not affect that sovereignty, in particular as the UN General Assembly makes only recommendations, which do not create obligations upon individual states unless expressly accepted by such states. Furthermore, General Assembly decisions imposed upon the dissenting minority by the mechanical majority vote, if the minority interests are in accordance with the aims and principles of the Charter of the United Nations, must be regarded as deprived of legal force. The minority has the right to reject those decisions."⁹²

However, both Krylov and Morozov who argued this way, fail to examine the reverse situation of their argument, whereby the minority, permanent members of the Security Council have to decide issues contrary to the interests of the majority. Soviet scholars claim that the call for the abolition of the veto right was not objective because it failed to appreciate in whose interest, by which countries and for what aims such veto rights are used.⁹³

The question of expanding the main organs of the United Nations was first introduced to the General Assembly in 1956 at the 11th Session by 19 Latin American countries and Spain.

92. Krylov, Istoria Sozdania Organizatsii Objedinonnikh Natsii (History of the Establishment of the United Nations Organizations;) (1952) p. 258.

Morozov, Organizatsia Objedinonnikh Natsii (United Nations Organization) (Moscow, 1962) p. 168.

93. Pozdniakov, Op. Cit. p. 80.

But it was not until the 18th Session that a positive stand was taken to effect changes. In July 1963, at the initiative of the Economic Commission for Africa, ECOSOC called on the General Assembly in the light of the increased membership of the UN to take appropriate measures at the 18th Session to increase the membership of the Economic and Social Council too.⁹⁴ At the Security Council, Ivory Coast representing Africa had a seat, while Malaysia and Czechoslovakia had to rotate one of the seats created by the 1946 Gentlemen's Agreement for Eastern Europe.

This had an impact on the strength of Eastern Europe at the Security Council who bitterly opposed the insistence of the Afro-Asian countries on the expansion of the main organs of the Organization.

Meanwhile, the Afro-Asian countries continued their struggle for better representation. In a letter dated 16 September 1963 (A/5519), 48 Afro-Asian countries requested the inclusion in the agenda for the 18th Session of an item entitled "Question of the Composition of the General Committee of the General Assembly."⁹⁵ The reason given in the explanatory

94. ECOSOC, Resolution No. 947 C (XXXVI), 22 July 1963. Such increase in membership according to the Economic and Social Council, would enable the Council to remain the effective and representative organ envisaged in Chapters IX and X of the Charter.

95. UN.G.A.O/R. Annexes, 18th Session, Agenda Items 81, 82, 12, Doc. A/5675.

note was mainly that according to rule 38 of the Rules of Procedure of the General Assembly, the General Committee should be so constituted as to ensure its representative character, and that in view of the increased membership of the UN., the General Committee has lost its representative character.⁹⁶ Another group of 44 Afro-Asian States in a letter (A/5520 and Corr.1) requested inclusion in the agenda of an item "Question of equitable representation on the Security Council and the Economic and Social Council."

At the 41st meeting of the Committee on 9 December, U.A.R. on behalf of 55 Non-aligned States submitted a draft resolution (A/SPC/L101 and Add. 1 and 2) on the composition of the General Committee. At the same meeting, Canada submitted an amendment A/SPC/L106 which was accepted. The 55 Non-aligned nation draft resolution was adopted by a vote of 97 to 1, with eleven abstentions. The draft resolutions submitted by 21 Latin American countries (A/SPC/L104 and A/SPC/L105) dealt with increasing the membership of the Security Council. Both drafts after amendments were adopted.⁹⁷

Draft resolution A/SPC/L104/Rev.1 which increased the membership of the Security Council in favour of the Afro-Asian countries was adopted by a roll-call vote of 96 to 11 with 4 abstentions. All the African States voted in favour

96. *ibid.* para.1.

97. *ibid.* para.20.

and none against, with South Africa, Portugal, United Kingdom of Great Britain and Northern Ireland and United States of America abstaining. France, the Soviet Union and nine other communist countries voted against. The second draft resolution A/SPC/L105 as revised was adopted by a roll-call vote of 95 to 11 with 4 abstentions. The position of the voters was the same as in the previous voting except that of the representative of China who stated that he would not participate in the second vote thereby cutting the majority down by one.⁹⁸

For both the Soviet Union and the African States, it was one of the rare moments in their co-operation on several issues at the UN. The Soviet Union apparently disturbed at the embarrassing alignment it made with 'the imperialist' West against the interests of the developing countries,⁹⁹ and having failed in the bids to justify its acts of self-interest by quoting legal points relating to the procedure of changing the Charter of the UN, decided to exonerate itself by looking for scapegoats.¹⁰⁰

98. *ibid.*

99. After all, the Soviet Union has always claimed to be the champion of the cause of the developing countries - a self-imposed position.

100. It is common habit in the Soviet Union to refer to the United Kingdom as England. Pozdniakov *Op. Cit.* p. 89.

101. UN.Doc.A/5686 of 31 December 1963.

102. *Ibid.* para. 10.

Analysing the result of the vote, a Soviet jurist wrote:

"In the egoistic effort to dominate the main organs of the Organization, three permanent members of the Security Council, U.S.A., England and France, failed to support the Afro-Asian resolution drafts, moreover, France voted against while U.S.A. and England abstained."¹⁰⁰

The Soviet Union in a letter of 31 December 1963¹⁰¹ on the question of expanding the membership of the Security Council and the Economic and Social Council explained its stand and was clever enough to introduce a legal argument as before, and this time with blames on China Peoples Republic for its action. The Soviet argument was that it was basically not opposed to these main organs being expanded in favour of the Afro-Asian countries. It claimed that on 5 September 1963, before the question was taken up at the session, it proposed as a first step that agreement should be reached on a redistribution of the existing seats of non-permanent members of the Security Council and members of the Economic and Social Council in favour of the Afro-Asian countries.¹⁰² The blunt rejection of the Soviet Union earlier should not be forgotten, having accused both the Afro-Asian group and the Western countries of allying to deprive Eastern Europe of their seats on some of these organs.

100. It is common habit in the Soviet Union to refer to the United Kingdom as England. Pozdniakov, Op. Cit. p. 89.

101. UN.Doc.A/5686 of 31 December 1963.

102. Ibid. para. 10.

According to the letter,

"it must be borne in mind, however, that in order to expand membership of the Security Council and the Economic and Social Council it is necessary to amend the relevant Articles of the Charter of the United Nations, and that no amendment can come into force unless it is ratified by two-thirds of the members of the United Nations including all the permanent members of the Security Council - the Soviet Union, China, the United States, the United Kingdom and France."¹⁰³

The letter further pointed out that one of the legal permanent members - the People's Republic of China was still deprived of its lawful rights in the United Nations, as a result of which it would be impossible for the five permanent members to reach an agreement as required by the Charter. Moreover, the obstruction to the restoration to the People's Republic of China of its legitimate rights was partially caused by the Afro-Asian States.

The Soviet Union having distributed the blame for its actions first on the West, then the Afro-Asian group, finally accused the People's Republic of China of double dealing. Soviet authorities accused China of plotting to organise a clash between itself and the Afro-Asian group. According to the letter, reportedly written by the People's Republic of China, it (P.R.C.) stated to the Soviet Union that while it was still barred from taking its lawful seat on the Security Council, it would not assume any obligations connected with the question of amending the Charter as regards the number of seats on the major organs of the United Nations.¹⁰⁴

103. *ibid.* para.13; See also, Mr. Federenko (U.S.S.R.) UN.G.A.O/R. 18th Session, 1285th meeting, para. 95.

104. UN.G.A. 18th Session, Annexes, Vol. 3, Doc.A/5686, para.20.

But it became apparent that the Soviet Union distorted the Chinese views on this topic. Speaking at the 1285th Plenary Meeting of the 18th Session of the General Assembly, the Albanian representative accused the Soviet Union of unworthy manoeuvres,

"which any sensible man can see as inadmissible", and called on the Soviet Union not to use the pretext of China to hide its own position.¹⁰⁵ Accusing the Soviet Union of misinforming the General Assembly on the Chinese position, the Albanian representative quoted extracts from a report issued by the Chinese News Agency Hsinhua in Peking on 12 December 1963.

The report accused the Soviet delegate, Mr. Federenko, of distorting the stand of the Chinese Government and of sowing dissension between China and the other Asian and African countries. The report further added:

"(H)e tried painstakingly to create the erroneous impression that the Chinese Government refused to support the above mentioned demand of the Asian and African countries before China's legitimate rights in the United Nations were restored."¹⁰⁶

105. Mr. Budo (Albania) UN.G.A.O/R. 18th Session, 1285th Meeting, para. 134.

106. Ibid. para. 129.

IX. REPRESENTATION OF CHINA AT THE UNITED NATIONS.

The question of restoration of the lawful rights of the People's Republic of China in the United Nations eventually found its way into the agenda of the General Assembly at the 16th Session after efforts had almost been exhausted.¹⁰⁷ This question, though it can not at present serve as a true test of Soviet-African support, was of significant importance at the time of its introduction.¹⁰⁸ So far we have analysed what cohesion existed between the Soviet Union and the African countries on purely African topics.

The Soviet Union has great interest in the question of China for reasons which are well known, and the Western countries hold contrary views to those of the Soviet Union. In between them are the non-aligned States - a group in which we find the bulk of the African countries.

This aspect of our work has nothing to do with African-Chinese relations, but we have selected certain non-African issues which have necessitated either Soviet or African views being analysed because the particular issue might have interested either side.

107. UN.G.A.O/R. 16th Session 1068th Meeting, 1 December 1961.

108. The ideological conflict between the People's Republic of China and the Soviet Union had not yet reached the critical stage it is now. Although China had fallen out with the Soviet leadership, the Russians were still making efforts to patch up things, and portray the indivisibility of world communism.

When discussion on the item "Restoration of the lawful rights of the People's Republic of China in the United Nations" proposed by the Soviet Union (Doc.A/4847) was started at the 1068th meeting in the 16th session, the Soviet Union representative attacked the United States and some of its allies for blocking the question of China, and stated that this hostile policy of the United States towards the People's Republic of China has long been condemned by the overwhelming majority of the States of Asia, Africa and Latin America.¹⁰⁹ This reference to the developing countries was no doubt an effort to gain the support of these countries for its own stand. Egypt, the only African country member of the Security Council in the fifties and early part of the nineteen sixties had always either abstained or voted against the Soviet Union on the question of China's representation.¹¹⁰

109. Mr. Zorin (U.S.S.R.) UN.G.A.O/R. 1068th Meeting, para. 69.

110. S.C.O.R. 5th Year, 461st Meeting, 13 January 1950. At this meeting, Egypt voted 'No' against Soviet proposal on Chinese representation. Also, on 1 August 1950, Egypt at the Security Council voted against the ruling of the Soviet President of the Council that representative of "Kuomitang" group did not represent China and therefore could not participate in Council meetings.

At the 16th Session, there were two draft resolutions before the Assembly. The draft resolution A/L.360 by the Soviet Union and A/L.372 by Australia, Colombia, Italy, Japan, and the United States of America. The U.S.S.R. draft was simply, the 'Restoration of the lawful rights of the People's Republic of China in the United Nations', and the other draft A/L.372 urged the Assembly to determine that any proposal to change the representation of China would be considered an important question in accordance with the Charter. As pointed out earlier in our discussions on the structures and functions of the General Assembly,¹¹¹ Article 18 of the Charter listed important matters on which a two-thirds majority vote is needed.

While the United States was not directly opposed to the question of China's representation, it was able to manoeuvre the issue by this legal clause, having relied on its numerical support at the General Assembly. According to Sydney Bailey, it would be possible to regard the preliminary question as more a matter of law than politics:

"is the representation of a member state 'important' within the meaning of the Charter?"

he asked. Then he added a major truth;

111. See above, p.201

"But in fact UN members seem to have been influenced by political considerations. With only one exception, States consistently favouring the representation of Peking have voted that only a simple majority should be required to effect the change. States consistently favouring the representation of Taiwan have voted for a two-thirds majority."¹¹²

On the two drafts at the 16th Session, eleven African States contributed to the debate.¹¹³ Their speeches and contributions were rather inconsistent and lacked full support for the Soviet Union. The Nigerian representative stated for example:

"As has become the practice in this Assembly, whenever there is a resolution on any question concerning which the two great powers are in opposite camps, there are always cold war materials introduced in the argument of such a resolution."¹¹⁴

Like the majority of the African States, the Nigerian representative in the efforts to appease the two powers added

"We support the admission of the People's Republic of China to the UN., but oppose the expulsion of the Republic of China."¹¹⁵

This indecisive attitude of the African States could be further illustrated from the speech of the Liberian delegate who stated:

"We must admit therefore, despite our feelings, that the Nationalist Government of China is the de jure Government of that country."¹¹⁶

112.

112. Chinese Representation in the Security Council and the General Assembly of the United Nations, (Sussex, 1970), p.8.

113. Mr. Bindzi (Cameroon) 1069, 1076 meetings; Mr. Wachuku (Nigeria) 1071 meeting; Mr. Henry Ford Cooper (Liberia) 1071 meeting; Mr. Quaison-Sackey (Ghana) 1072 meeting; Mr. Loutfi (U.A.R.) 1073 meeting; Mr. Diallo Telli (Guinea) 1075 meeting; Mr. Collier (Sierra Leone) 1076 meeting; Mr. Rakotomalala (Madagascar) 1076 meeting; Mr. Bourguiba (Tunisia) 1077 meeting; Mr. Ba (Mali) 1077 meeting; Mr. Cisse (Senegal) 1079 meeting.

114. Mr. Wachuku (Nigeria) UN.G.A.O/R. 16th Session, 1071st meeting, para. 56.

115. *ibid.* para. 60.

116. Mr. Henry Ford Cooper (Liberia) UN.G.A.O/R 16th Session, 1071st meeting, para. 90.

The West, especially the U.S.A. must have been pleased with the de jure recognition of its ally - Taiwan. However, there was consolation for the U.S.S.R. and the Eastern European countries when later the Liberian representative reiterated the assurance:

"There can be no doubt that the People's Republic is the de facto Government of China."¹¹⁷

This conclusion apparently left both sides not fully satisfied. When all the eleven speakers had spoken, four representatives supported A/L.360 proposed by the Soviet Union (Ghana, Guinea Mali and Egypt). Nigeria and Sierra Leone favoured a special body being set up to look into the question and make recommendations; while Liberia, Senegal, Madagascar and Camerouns spoke in favour of the 5 power draft (A/L.372). Tunisia criticised both draft resolutions and declined to support either.

When the drafts were put to the vote, it was clear even from the vote on the motion for priority in favour of draft A/L.372, that A/L.360 would gain no approval. The motion was adopted by 61 votes to 21 with 20 abstentions.¹¹⁸ Draft resolution A/L.372 was adopted by 61 votes to 34 with 7 abstentions.¹¹⁹ Fifteen African States supported the 5 power

117. *ibid.* para. 95.

118. 14 African States voted for, 3 against and 10 abstained.

119. UN.G.A.O/R. 16th Session, 1080th Meeting, para. 22.

draft, 8 voted against and 4 abstained.¹²⁰ The 3 power amendment to A/L.360 was rejected after a roll-call having failed to obtain the required two-thirds on the separate votes taken.¹²¹

The second draft A/L.360 by the Soviet Union was defeated, having failed also to obtain the two-thirds majority required. 36 voted in favour, 48 against, with 20 abstentions. The result of the African votings was rather interesting. 9 voted against the Soviet draft, 9 voted along with the Soviet Union and 11 abstained.¹²² In his speech after the vote, the Soviet representative remarked that the result of the vote on draft A/L.360 was impressive, and recalled that:

"thirty-six delegates voted in favour of it, including most of the larger countries of Asia and Africa."¹²³

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120. FOR: Ivory Coast, Liberia, Libya, Madagascar, Mauritania, Niger, Senegal, South Africa, Upper Volta, Cameroon, Central African Republic, Chad, Congo (Brazaville), Congo (Leopoldville), Dahomey. AGAINST: Mali, Morocco, Sudan, Tunisia, U.A.R., Ethiopia, Ghana, Guinea. ABSTAINING: Nigeria, Sierra Leone, Somalia, Tangayika.
121. UN.G.A.O/R. 16th Session, 1080th Meeting, paras. 27, 28.
122. FOR: Guinea, Mali, Morocco, Sierra Leone, Somalia, Sudan, U.A.R., Ethiopia, Ghana. AGAINST: Liberia, Libya, Madagascar, Mauritania, Senegal, South Africa, Tangayika, Cameroon, Gabon. ABSTAINING: Ivory Coast, Niger, Nigeria, Togo, Tunisia, Upper Volta, Central African Republic, Chad, Congo (Brazaville) Congo (Leopoldville), Dahomey.
123. Mr. Zorin (U.S.S.R.) UN.G.A.O/R. 16th Session 1080th meeting, para. 48.

In the opinion of the writer, the result was very impressive bearing in mind that the question placed the African Member States of the UN in a rather difficult position at that time. Foremost, it should be remembered that the majority of the African States were only recently admitted to membership of the Organization, with limited experience of proposing decisive initiatives. Secondly, those who voted along with the Soviet Union had loose ties with that country, and in fact the majority had no diplomatic relations with the Chinese People's Republic. The persuasive efforts of the Soviet Union must have therefore influenced the very few who voted for the Soviet draft.

Moreover, the number of those African States which could not make up their minds during the voting confirmed the embarrassing situation. At the 17th Session, a Soviet draft resolution A/L.395 similar to the 16th Session's draft resolution A/L.360 was rejected by 56 votes to 42,¹²⁴ In all, 13 African States voted for the Soviet Draft resolution, 17 against and 2 abstained.¹²⁵

Subsequent votes until the People's Republic of China became the legitimate representative of China at the UN in 1971, showed a massive shift of the African's support for

124. UN.G.A.O/R. 17th Session, 1162nd Meeting, para. 81.

125. Ibid.

the People's Republic. One of the major reasons for this could be in terms of diplomatic success of the People's Republic in Africa.¹²⁶

However, this aspect is no more than peripherally relevant to our discussion. Considering the Soviet Union-African co-operation at the UN., a basic fact must be taken into account. In the United Nations, resolutions are the major forms for translating policy preferences into United Nations decisions. Therefore, we find that States often strive to get draft resolutions adopted by the General Assembly. It is true as well that a draft resolution confirms definitely with the policy preferences of its proposer and co-sponsors. In view of these considerations, it is assumed that the world powers tend to attach great significance to the votes taken on various issues at the General Assembly, since these votes sometimes reflect correct world opinion. Also, in view of the submissions at the chapter one of this work of the growing legal significance of General Assembly resolutions, it is expected that the big powers will regard co-operation of the developing nations at the UN, as essential to achieving their objectives at the United Nations.

126. When the United Nations General Assembly on October 25 1972 voted by 76 to 35 with 17 abstentions to seat the People's Republic of China and to expel Taiwan, 26 African countries voted in favour and 15 against. IN FAVOUR: Algeria, Botswana, Burundi, Cameroon, Congo People's Republic, Egypt, Equatorial Guinea, Ethiopia, Ghana, Guinea, Kenya, Libya, Mali, Mauritania, Morocco, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, Tanzania, and Zambia. AGAINST: Central African Republic, Chad, Congo Democratic Republic, Dahomey, Gabon, Gambia, Ivory Coast, Lesotho, Liberia, Madagascar, Malawi, Niger, South Africa, Swaziland and Upper Volta.

CHAPTER FOURECONOMIC CO-OPERATIONI. INTRODUCTION

Analysis of the economic situations of the poor and backward continents of Asia, Africa and Latin America reveals that the African continent is the least developed of all. It was noted at the Eighth Session of the Economic Commission for Africa, held in Lagos in 1967, that the African continent is not only the poorest of the developing regions of the world, but also has the slowest pace of development.¹

However, the continent is naturally rich in mineral resources as well as agricultural potential. According to a Soviet source, in 1965 for example, it

"accounted for 98% of the entire diamond production of the capitalist world, 30% of the columbite production, 75% of₂ the cobalt production, 78% of the gold production, etc."

African countries are the main producers of such tropical products as cocoa, coffee, cotton, palm-oil, nuts and sisal.

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1. Tom Mboya (Kenya) Economic Commission for Africa; 8th Session, 13-25 February, 1967. E/CN, 14/SR, 129 (VIII).
 2. Ekonomicheskoe Sotrudnichestva SSSR so Stranami Afriki. (Economic Co-operation of the U.S.S.R. with the African Countries, edit. V.C. Baskin (Moscow, 1968).

With all this natural wealth, it might be supposed that the continent would be able to solve its problems of economic development. The main factor which would help in solving these problems is the self-effort of these countries. However, in order to resolve them within a limited space of time,

"their national exertions to this end will be greatly impaired if not supplemented and strengthened by constructive international³ action based on respect for national sovereignty."³

The Final Act of the United Nations Conference on Trade and Development in its preamble expressed the determination of the signatory States

"to seek a better and more effective system of international economic co-operation whereby the division of the world into areas of poverty and plenty may be banished and prosperity achieved by all; and to find ways by which human and material resources of the world may be⁴harnessed for the abolition of poverty everywhere."⁴

After their attainment of independence, most African States expanded the scope of their economic activities vis-a-vis the developed nations of the world. Some of the newly independent States were initially reluctant to establish economic

3. Final Act, Unctad, E/Conf. 46/141, Vol. 1, 1964, p. 3.

4. Final Act, Unctad. Loc. Cit., p. 3.

relations with the socialist states, principally because of their suspicions of the socialist system, as reflected in a statement in 1961 by the Nigerian Foreign Minister that

"to rush into Russia without first preparing the ground would be to commit political and diplomatic suicide."

However, in order to accelerate their economic development, the African States started to establish economic relations with all developed countries of the world, irrespective of their socio-political systems. This line of action conforms with the overall interests of the African States, and in fact with the unanimous resolution adopted at the 76th Plenary Meeting of the UNCTAD which recommends that the developing countries

"give, in particular, due attention to the possibility of expanding their trade with the Socialist countries."

The economy of the African States is of vital importance to the further economic development of the developed nations, including the Soviet Union. The 24th Congress of the Communist Party of the Soviet Union noted this, and directed

5. Nigeria: Bulletin on Foreign Affairs, Vol. 1, No. 3, January, 1972.

"the continuous development of steady economic and scientific, technological relations with the developing countries of Asia, Africa and Latin America on the terms of mutual advantage."

Considering the desire on all sides for mutual economic co-operation, an attempt is made in this chapter to examine from the legal point of view, certain aspects of such co-operation.

II. CLASSIFICATION OF AGREEMENT ON ECONOMIC CO-OPERATION

Economic co-operation between the Soviet Union and the African States is regulated mainly through the medium of inter-state agreements on:

- (a) economic and technical aid or co-operation,⁷

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6. V.G.Solodnikov, Trade Relations of the U.S.S.R. with the Developing Countries, *Narodi Azii i Afriki*, (The people of Asia and Africa), No. 6, 1971, p.1;
In the general questions related to economic relations of the Soviet Union with foreign countries, the view has been expressed that, "Of all the Soviet treaties concluded between 1917 and the end of 1957, almost one third are primarily concerned with economic problems...90 per cent of these essentially economic engagements are bilateral agreements ... Quantitatively and qualitatively Soviet economic treaties are the most important of all Soviet treaties for recent Soviet Foreign Policy." Triska and Slusser, the Theory, Law and Policy of Soviet Treaties (California, 1962), pp. 284-285.
7. Tanzania-Soviet Union Agreement on Economic and Technical Co-operation of 26 May 1966, Ministerstvo Innostranykh Del SSSR. Sbornik Deistvuyushikh Dagavorov, Soglashenii i Konvensii zakluchenikh SSSR s Innostranimi Gasudarstvami (Ministry of Foreign Affairs. Collection of Treaties, Agreements and Conventions in Force Concluded by the U.S.S.R. with Foreign Countries (hereafter referred to as SDD) (Moscow, 1971) Vol. XXIV p. 339; Uganda-Soviet Agreement on Economic and Technical Co-operation of 30 November 1964 *ibid.* p. 350; Somalia-Soviet Agreement on Economic and Technical Co-operation of 2 June 1961. United Nations Treaty Series (hereafter referred to as UNTS) Vol. 457, p. 263. etc.

(b) trade,⁸ (c) credits and payments,⁹ (d) navigation and fishing, and in other economic fields.¹⁰ The agreements on these matters create legal rights and obligations which are of specific importance in that they regulate relations between countries of different social systems and different standards of economic development. The various objects of economic co-operation are reflected in the nomenclature of the agreements. Thus, the Agreement between the Soviet Union and Somalia of June 1961 is entitled "Agreement on economic and technical co-operation" while a second Agreement between the two countries signed on the same day is known as the "Trade and Payments Agreement".¹¹ The Soviet-Ghana Agreement of

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8. See Soviet-Cameroon Trade Agreement (with annex) of 24 September 1962. UNTS Vol. 672, p. 305; Soviet-Tanganyika Trade Agreement of 14 August 1963, *ibid.* vol 493, p. 195; Soviet-Congo (Republic of) Trade Agreement (with annexes) of 26 May 1964, Vol. 672, p. 329; Soviet-Sierra Leone Trade Agreement of 25 April 1965, SDD (1971) p. 336 etc.
9. See Soviet-U.A.R. Payments Agreement of 23 June 1962. UNTS, Vol. 472, p. 19; Soviet-Ghana Long-term Payments Agreement of 4 November 1961, *ibid.* Vol. 655, p. 181. etc.
10. Soviet-Guinea Agreement on Co-operation in the Fields of Sea Fisheries of 2 February 1966, SDD (1971), p. 133, etc. For a detailed classification of agreements on economic and technical co-operation, see Kurs Mezhdunarodnovo Prava. (Treatise on International Law), (edit. F. Kozhenikov) (Moscow, 1966) pp. 501-520.
11. UNTS. Vol. 457, 1963, p. 263 and Vol. 493, 1964, p. 173.

2 July 1961 is known as the "Protocol on Legal Status of Trade Representation of the Union of Soviet Socialist Republics in the Republic of Ghana."¹²

The differences in the titles of these agreements have no restrictive effect on the legal powers they confer on the parties. They must be strictly observed under the rule of pacta sunt servanda. The most important forms of economic relations between the U.S.S.R. and the developing countries are in the field of trade, economic and scientific co-operation. These forms are interdependent. Economic and technical co-operation serves often as the basis for broadening trade relations, whilst the development of trade between the Soviet Union and a developing country leads often to the establishment of economic and technological co-operation.¹³

According to Professor Solednikov of the U.S.S.R. Institute of African Studies,

"the Socialist countries consider it their task to assist the young states in creating and developing their independent national economy and first of all, the state sector."¹⁴

To fulfil this task, he continued, the following specific forms of co-operation are being carried out:

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12. *ibid.* Vol. 655, 1969, p. 171.
 13. Professor V. Solednikov, External Economic Relations of the U.S.S.R. with the Developing Countries. Narodi Azii i Afriki, No. 5, 1971, p. 5.
 14. *ibid.*

- (a) Granting long-term credits on favourable terms to the Sovereign State;
- (b) Fulfilment of surveying and designing jobs, delivery of complete equipment and materials for industrial enterprises and other projects under construction;
- (c) Technological assistance in the construction and putting into operation and exploitation of industrial enterprises, carrying out geological prospecting and extracting of raw materials;
- (d) Assistance in the creation of geological prospecting, planning, building, scientific research and other organisations;
- (e) Assistance in the training of cadres, specialists and skilled workers for the construction and exploitation of completed enterprises;
- (f) Sending experts to the developing countries as advisers.

III. AGREEMENT ON ECONOMIC AND TECHNICAL CO-OPERATION

Most of the agreements on economic and technical co-operation between the Soviet Union and the African States include all the principles enumerated above, thereby reflecting a steady pattern of characteristics. The Soviet Vice Chairman of the State Foreign Economic Relations Committee of the U.S.S.R. Council of Ministers stated in an article:

"Economic and technical co-operation between socialist states and developing countries is a relatively new phenomenon in the sphere of international ties. It became possible after the victory of the Great October Socialist Revolution marking the beginning of the end for the colonial system of imperialism."

Such co-operation according to him,

"is one of the factors in the struggle between the two world systems - socialism and capitalism."¹⁵

When the Soviet Union entered the business of exporting technology, it already enjoyed a reputation for high technological progress though the African States were less familiar with its products than with those of the Western countries. Certain factors, however, contributed to the steady improvement of economic and technical co-operation between the two sides. Official visits made by economists and technologists of both sides to each other's countries have given greater impetus to furthering this co-operation. Furthermore, the active participation of the Soviet Union in international and national trade fairs in the developing countries has enabled African business concerns and societies in general to be more enlightened about the economic and technological achievements, and capabilities of the Soviet Union.

15. V. Sergeyev, The Soviet Union and the Developing Countries. International Affairs, (Moscow, 1971) Vol. 5, pp. 25-26.

To appeal to and influence African markets, the Soviet Government puts up very elegant pavilions at each African trade fair, coupled with heavy propoganda.¹⁶ In addition, as stated earlier,¹⁷ mutual benefit is derived from the co-operation between the two sides. Most African States realise that their very survival is contingent on achieving a 'jet propelled' rate of economic growth.¹⁸ It is fully appreciated in the Soviet Union that

"the further broadening of foreign trade, economic and technological co-operation with the socialist countries will promote the strengthening of the position of the developing countries struggling for the realisation of the radical social-economic reforms, and the weakening of the foreign monopolies influence, upon their economy."¹⁹

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16. The New York Times of 2 April 1961 reported that at a permanent showroom of Soviet Industrial products at Addis Ababa, on 1 April 1961, where Soviet traditional exports were shown, "free serving of caviar washed down with vodka, attracted the visitors as much as the exhibits."
17. See above, p. 223
18. The Autobiography of Kwame Nkrumah (New York, 1965), p. 10.
19. Slodnikov, Op. Cit. Vol. 6 1971, p. 13.

In 1959, only three African countries had agreements on economic and technical co-operation with the Soviet Union;²⁰ but by the beginning of 1968, the number of such agreements had risen to seventeen,²¹ and by early 1970 to twenty.²² The number has substantially increased since. It may therefore be stated that there is a constant improvement in the depth and extent of economic and technical co-operation between the two sides. This conclusion may be supported by considering other aspects of co-operation such as political and cultural co-operation. The reasons for this development have been stated, in part, above. They may also, in part be those stated earlier under the Principles of Co-operation in Chapter One - namely that, while the principles regulating economic relations contain positive elements, those regulating political and cultural relations do not have such positive significance but are rather inevitable concomitants of any system regulating relations between states, since they constitute attributes of sovereignty.

20. Economic Co-operation of the U.S.S.R. with the African Countries, Op. Cit. p. 17.

21. *ibid.* p. 18.

22. Solodnikov, Op. Cit. Vol. 5 1971, p. 8.

IV. PRINCIPLES

The question regarding formulation of the principles of International economic co-operation was first introduced at the 455th meeting of the Second Committee of the General Assembly on 4 October 1957.²³ It was introduced by the Rumanian delegation, and among the principles submitted for adoption were:

- (a) mutual respect for the economic independence of all states.
- (b) Equality, equivalent exchanges and mutual advantage
- (c) respect for permanent sovereignty over natural wealth and resources.
- (d) economic and technical assistance for underdeveloped countries should not be linked with conditions detrimental to the economic and political independence of the underdeveloped states concerned.²⁴

At the 475th meeting of the Second Committee, Rumania withdrew its draft resolution and co-sponsored the Mexican draft A/C.2/L.337 entitled - "Draft resolution on bases for international economic co-operation". An important step towards formulation of the principles of international economic co-operation was achieved when the General Assembly at its

23. Mr. Serban (Rumania) UN.G.A.O/R. 12th Session, Second Committee, 455th Meeting, para. 5.

24. UN.Doc.A/C2/L.330.

723rd Plenary Meeting of 26th November 1957, adopted Resolution 1157 (XII) "Bases for international economic co-operation."

The resolution, recalling that the General Assembly and the Economic and Social Council have on several occasions adopted resolutions embodying various principles relating to international economic co-operation requested the Secretary General to prepare such a compendium of resolutions or extracts from them with a subject index. Thus, as it could be noticed, Resolution 1157 (XII) contained nothing specific on principles of international economic co-operation.

At the 671st meeting of the Second Committee, the question of principles of international economic co-operation was taken over by the Soviet Union. The Soviet Union submitted a draft declaration (A/C.2/L.466). According to the Soviet delegate, the draft declaration was to provide a basis for international economic relations

"and to extend, rather than replace, those provisions."²⁵

The contents of Doc.A/C.2/L.466 were very similar to those of Doc.A/C.2/L.330 by Rumania referred to above.

25. Mr. Chernyshev (U.S.S.R.) UN.G.A. 15th Session Second Committee, 672nd Meeting of 9 November 1960, para. 12.

On a proposal by the Afghanistan delegate,²⁶ the draft declaration and the comments that had been made by members on it were transmitted to the Economic and Social Council for further action,

The Economic and Social Council established an ad hoc Working Group (resolution 875 (XXXIII)) of 13 and 18 April 1962 in the elaboration of a draft declaration on the principles of international economic co-operation. By its resolution 917 (XXXIV) of 3 August 1962, the Economic and Social Council resolved to convene a UNCTAD. This decision was endorsed by the General Assembly resolution 1785 (XVII) of 8 December 1962. Resolution 917(XXXIV) of the Council also decided to convene a preparatory committee of UNCTAD to consider the agenda and documentation for the conference. The Council as well drew the attention of the Preparatory Committee of the UNCTAD to the paragraphs of the report of the ad hoc Working Group (Doc.E/3725) concerning problems of international trade.

An important achievement of the UNCTAD is the formulation of principles of international economic co-operation. These are enumerated under the General and Special Principles.

26. Mr. Omar (Afghanistan) UN.G.A. 15th Session, Second Committee, 674th Meeting, 10 November 1960.

In economic and trade co-operation between the U.S.S.R. and the African States most of these principles are applied. They form general pattern for formulating their own principles of co-operation. Thus, General Principle One of the UNCTAD states -

"Economic relations between countries, including trade relations, shall be based on respect for the principle of sovereign equality of States, self-determination of peoples, and non-interference in the internal affairs of other countries."²⁷

The principles enumerated in the General Principle One of the UNCTAD are usually found in all the agreements between the Soviet Union and the African States.

The numerous agreements in force between the Soviet Union and the African States are couched in the general context of the broad policy embracing peaceful co-existence, non-intervention, sovereign equality, self-determination and mutual benefits which tends to distinguish the Soviet Union as a great power genuinely spreading its riches to the poor countries of the world. Thus the preamble of the agreement on economic and technical co-operation between the Soviet Union and the Somali Republic signed at Moscow on 2 June 1961²⁸ stated:

27. UNCTAD Final Act and Report, Op. Cit. p. 18.

28. U.N.T.S. Vol. 457, 1963, p. 276. This agreement will be taken as an example of a standard agreement on economic and technical co-operation between the Soviet Union and the African States. Since indeed all these agreements have similar characteristics, we shall refer to others as much as possible.

"Prompted by a mutual desire to establish and develop economic and technical co-operation on the basis of the principles of equality, non-interference in domestic affairs and full respect for the national dignity and sovereignty of the two countries, and with a view to promoting the implementation of plans for the development of the national economy of the Somali Republic and increasing the well-being of the Somali people."

Similar provisions were contained in the Soviet-Ghana Agreement on economic and technical co-operation of 4 August 1960,²⁹ which stated in the preamble that such co-operation

"shall be based on the principles of mutual benefits, equality, respect for sovereignty and non-intervention in the internal affairs of one another."

V. FORMS

The agreement usually takes the form of a bilateral interstate agreement signed by the competent authorities of each state and duly ratified if such is required by the terms of the agreement.³⁰ This type of international agreement may be contracted in any of the various forms generally recognised as appropriate for treaties, but they appear mainly in the form of either an Agreement, Protocol or an Exchange of Notes. The form

29. Ministerstvo Innostrmanikh Del SSSR. SSSR i Strani Afriki (1946-1962) (Ministry of Foreign Affairs of USSR USSR and the African Countries (1946-1962)) (Moscow, 1963) p. 580. See also, preamble of Soviet-Guinea Agreement on economic and technical co-operation of 24 August 1959. *ibid.* p. 460.

30. The Somali-Soviet Agreement was signed by Mr. Skachkov for the Soviet Union, and Mr. Muhamud for Somali. Article 12 of the Agreement stated that the agreement shall be subject to ratification in accordance with the laws of each country.

of agreement chosen depends mainly on the volume and economic importance of the matters to be regulated rather than on their legal importance.

Analysis of the three forms may throw some additional light on the matter. For instance, the first form in Soviet-African practice, the "Agreement on Economic and Technical Co-operation" - is the most common, and it regulates matters of intrinsic importance. An agreement between the Soviet Union and the Republic of Mali of 10 October 1962 concerned the provision of economic and technical assistance by the Soviet Union to the Republic of Mali for the development of the State agricultural undertaking known as the "Office Du Niger".³¹ The first agreement on economic and technical co-operation between the Soviet Union and Egypt was signed on 29 January 1958. This and subsequent agreements have resulted in the assistance by the Soviet Union in the U.A.R. in the designing, construction and assembly of 100 industrial enterprises and other projects, about eighty of which have already been put into operation. One of these, and perhaps the most important is the Aswan High Dam Complex which has a capacity of 2100,000 kilowatts, and transmission lines extending for a total distance of over 3,000 kilometres.³²

31. U.N.T.S. Vol. 493, 1964, p. 219.

32. Sergeyev, *International Affairs*, Op. Cit. pp. 27-28.

Sometimes during negotiations the African and Soviet Governments are unable to reach an agreed statistical analysis of the entire range of matters to be regulated; and in these circumstances they often sign a general agreement on economic and technical co-operation. This type of general agreement does no more than define the main principles of assistance in developing various parts of the national economy of the African State concerned. Thus, Article 1 of the Agreement on Economic and Technical Co-operation between the Soviet Union and the Somali Republic of 2 June 1961 stated in part:

"The forms, periods and extent of technical assistance in respect of each undertaking and project, and a list specifying their capacity, shall be established by the Parties after their experts have studied the data required for determining the technical and economic feasibility of the execution of these or other undertakings and projects."³³

At times a protocol signed by the two parties is concluded to define the concrete objects of co-operation, the volume of the technical assistance and its starting date, along with other objects which could not be defined with sufficient precision at an earlier stage. In these circumstances, it may be noticed that the first form of agreement serves as preliminary agreement, and the protocol as the main agreement. However, the importance of the former is that the detailed provisions of a protocol must in no way contradict the principles laid out in the general agreement preceding its conclusion.

33. *ibid.* Vol. 457.

A protocol is often signed between the Soviet Union and a particular African State with which there already exists a general agreement on economic and technical co-operation. The purpose of the protocol may be to effect changes which might have become necessary in the rights and obligations provided for in the general agreement. Thus the Soviet-Somalia Protocol of 9 May 1966 was entitled: Protocol to the Soviet-Somali Agreement on Economic and Technical Co-operation of 2 June 1961. The later protocol, considering the friendly relations existing between the two countries, and with a view to promoting favourable conditions for the successful implementation of the Soviet-Somali Agreement of 2 June 1961, stated that in accordance with the request of the Somali Republic, the Soviet Union agreed on certain changes in the said 1961 agreement.³⁴

Such an instrument is of legal significance, in that frequently the developing states find out that they are unable to implement before the expiry date, obligations undertaken in earlier agreements and since there exists in Soviet-African economic co-operation the practice of deferring the expiry date in this way, the African States definitely stand to gain by the opportunity provided which enables them to avoid breaches of international obligations. Protocols serve other purposes.

34. SDD (1971), p. 331.

Thus, Article 1 of the Soviet-Guinea Protocol to the Agreement between the two countries on economic and technical co-operation of 24 August 1959 signed on 8 September 1960 stated that in accordance with the request of the Guinea Government, the Soviet Government agreed to increase the sum of credits stipulated in the 24 August agreement by 86 million roubles.³⁵

The third form of agreement which regulates economic and technical co-operation between the Soviet Union and the African States is the Exchange of Notes or Exchange of Letters. This type of agreement is often used to regulate certain changes or additions to separate questions which might arise in agreements or protocols, such as postponement of the date of delivery of equipment, increase or decrease in the supplies of assistance, changes affecting the capacity of some of the objects of assistance, and the like.

In Article 7 of the Somali-Soviet Agreement of 1961, it was stated that

"The dates for the completion of delivery of the complete set of equipment for the undertakings or projects shall be fixed in letters to be sent by the Soviet foreign trade bodies to the competent Somali organizations."

35. U.S.S.R. and the African Countries, Op. Cit. pp. 627-28. See also Soviet-Senegal Protocol to the Agreement on Economic and Technical Co-operation of 14 June 1962, signed on 22 March 1965. SDD (1971) p. 298.

The three instruments - Agreements, Protocols and Exchange of Notes have the same legal effect since they are inter-governmental instruments. All three are employed to regulate relations between the Soviet Union and particular African States as part of the process of technical co-operation.

VI. OBJECTS AND AIMS.

A feature of the economic and technical assistance agreements is the provision for the construction of certain enterprises, notably industries and plants such as dams and hydro-electric power stations, food industry, iron and steel industry, and so forth. The Soviet Government notes that

"export from the U.S.S.R. to the developing countries is of a productive character (machines and equipment, ferrous and non-ferrous metals,... goods which are necessary for the formation of the industrial basis of their own fundamental economic and social progress.)"³⁶

The emphasis in the Soviet export trade to these countries is laid on the supply of the means of production, which Soviet authorities tend to regard as the essential basis for the building of a socialist state. In most cases, the direction in which Soviet aid is channelled in each individual case is based on the wishes of the country involved. At the same time, careful study is made of all the objective factors determining the economic possibility of constructing a particular project, such as availability of financial, raw material, power and labour resources, etc.

36. Solodnikov, Op. Cit. Vol. 6, 1971, p. 8.

Such is the planning of Soviet Aid programmes that the view had been rightly stated that it might raise new problems for the Western Governments in carrying out their aid programmes.

"For example, United States aid agencies and the International Bank for Reconstruction and Development insist on a detailed analysis of the economic usefulness of projects they are asked to finance. The Soviet Union, on the other hand, represents itself as willing to finance any project that the recipient considers desirable, and will suggest or evaluate projects only if asked to do so."³⁷

Aims of agreements on economic and technical co-operation between the Soviet Union and various African States are usually stated in the preambles to such agreements and the prime aim is the mutual desire to establish and develop economic and technical co-operation. The gainful aspect of such co-operation for the Africans is that it helps individual African States to implement its development plans. These aims are contained in the preambles.

As a result of agreements on economic and technical co-operation specific objects have been constructed by the Soviet Government in African countries. To quote a few examples, the first Soviet-Guinea Agreement on Economic and Technical Co-operation was signed in 1959.³⁸ The Soviet Union has provided technical aid in the construction of 47 projects, 30 of which had been completed and put into operation: these include a cannery and slaughterhouse with coldstore at Mamou; a saw mill; the Sonfoniya radio station; a polytechnic institute etc.³⁹

37. J.S. Berliner. Soviet Economic Aid (London, 1960) (Abridged) pp. 20-21.

38. See note 29 above.

39. Sergeyev, Op. Cit. p. 29.

The cannery in Mamou is the first industrial enterprise built in Central Guinea, and the polytechnic institute, designed for a yearly admission of 300 students has nine departments; Construction; Electrical Engineering; Mining and Geology; Chemistry; Agriculture; Medicine; Science; Social Sciences; and a School of Higher Education.⁴⁰

In the Sudan, as a result of agreement on economic and technical co-operation the Soviet Government has helped in the construction of the following objects: two vegetable and fruit canneries in Karima and Wau; two grain elevators at Port Sudan and Gedarof; a milk factory at Babanusa; and an onion-drying factory at Karima.⁴¹

VII. LEGAL RIGHTS AND OBLIGATIONS

Article 2 of the Soviet-Somali Agreement of 1961 listed Soviet obligations as follows:

"To provide technical assistance for the construction of undertakings and other plant provided for in Article 1, by carrying out planning and exploratory work, furnishing such equipment, building machinery and materials for the construction of the undertakings and plant, and for the effecting of geological research, as are obtainable in the Somali Republic, and supplying technical assistance for the construction, assembly, adjustment and bringing into operation of the equipment, for which purpose Soviet specialists and qualified workers shall be sent to the Somali Republic in numbers and for periods of stay that shall be determined by agreement between the Parties. The Soviet Organizations shall also help in the training of Somali specialists...by supplying Somali citizens with training locally and at appropriate undertakings in the U.S.S.R."

40. *ibid.*

41. *ibid.*

The broad obligations of the Soviet Union as above, are in accordance with the recommendation of the UNCTAD on "Conditions of Economic and Technical Co-operation."⁴² In operative paragraph (b), the Conference recommends that developed countries should

"do everything necessary to ensure that undertakings built with their assistance reach their designed capacity as soon as possible, by assigning, at the request of the developing countries, experts and skilled operators for the initial stage of operation."

Operative paragraph (c), recommends developed countries

"to make full use of local cadres and to assist in the training of skilled workers, engineers and technicians to satisfy the personnel requirements of the undertakings constructed."

The United Nations through its various Specialised Agencies has contributed to the implementation of this and other recommendations of the UNCTAD aimed at developing the economy of the developing nations. Most significant of these Agencies is the United Nations Development Programme (UNDP) which has concluded numerous agreements with the African States on technical co-operation.

Thus, an agreement signed between Ethiopia and the UNDP in August 1973 was for the continuation of geological surveys of Ethiopia. Under the terms of the agreement, the UNDP will provide advisers, equipment and training facilities for the project.⁴³

42. Final Act. UNCTAD. Doc. A.IV.25.

43. A.R.B.(E.F.T.) Vol. 10, No. 7. August 31, 1973. p. 2827B.

Also, the Malagasy Minister of Territorial Development and the resident representative of the UNDP recently signed on 10 September 1973, a convention in Tananarive on the study of the port of Morondava in South-West Madagascar. The UNDP granted a credit of \$425,000 for the study, and the Malagasy Government has contributed some \$115,000 in equipment.⁴⁴

The Somali Government has its own side of the general obligations as provided in the agreement. Article 3 defines these obligations. It states:

"The Government of the Somali Republic, acting through the competent Somali Organizations and observing time-limits to be agreed upon by the two Parties, shall:- provide the Soviet Organizations with the initial data necessary for planning and for technical exploration in the areas of operation - consider, approve and sign plan specifications and draft contracts - execute, with the technical assistance of the Soviet Organizations, all construction and assembly work for the undertakings and plant, and carry out the geological surveys and other work, provided for in the Agreement - supply labour, such essential local building and other materials as can be provided in Somalia, as well as electric power and water - build access roads and external lines of communication up to the sites of the projects - and provide such services and fulfil such other obligations of the Somali Party as are necessary to enable the Soviet Organizations to furnish the technical assistance specified in this Agreement."

44. *ibid.* Vol. 10. No. 8. September 30, 1973, p. 2861A.

In order to ensure the prompt fulfilment of these obligations, the opening paragraph of Article 3 is of significance. It stressed that it was essential to observe time-limits. Reference was made above⁴⁵ to the Protocol to this same agreement signed on 9 May 1966. At the request of the Somali Government which could not possibly fulfil its own side of the obligations within the time-limit set by the June 1961 agreement it was essential to sign a protocol in order to extend the earlier time-limit.

VIII. CONTRACTS AS LEGAL MEANS OF IMPLEMENTING AGREEMENTS.

In order to implement the obligations undertaken by the parties to an agreement on economic and technical co-operation, the governments of the states parties to such agreement commonly authorize their competent organizations and companies to enter into another form of legal relationship by signing contracts between themselves. The parties to such contracts are usually artificial legal persons, such as corporations, organizations, private firms and the like. However, there have been occasions on which a Soviet organization has directly signed a contract with the Government of an African State or with a Government representative or minister who is not an international legal person. In that case, the latter party to municipal law relationship constituted by such a contract is the state.

45. See Note 34.

In this context, a contract is the legal document which concretely defines the obligations of the contracting parties with regard to the construction of the type of undertaking mentioned above. To regulate the relations that arise between the parties during technical assistance, it is possible to sign a single contract, but only when the object of such technical assistance is not a complex one. At the initial stage of the construction of a large and complex undertaking, it is often difficult to define the concrete obligations of the parties and other relevant issues such as the volume of technical assistance, kind and quantity of equipment and materials to be supplied, and also the total costs of such technical assistance.⁴⁶

All of these matters involve the signing of numerous contracts and not a single general one. Thus in the construction of a complex undertaking, there are separate contracts on;

- (a) planning and exploratory work;
- (b) supplies and furnishing the equipment, building materials and machinery for the construction of the undertaking specified in the general agreement;
- (c) sending of Soviet specialists and qualified workers to an African country;
- (d) training of African personnel for work in the undertakings to be set up with Soviet assistance.

46. Article 10 of the Soviet-Somali Agreement having stated that the performance of the geological surveys and planning, delivery of equipment and other items shall be effected by the Soviet Organizations on the basis of contracts to be concluded, stated further that such contracts shall specify in detail the quantities, prices, delivery dates and other conditions related to the deliveries of equipment.

Thus, under the general agreement on economic and technical co-operation between Algeria and the Soviet Union, Mr. Tahar Hamdi, President of the Algerian mining concern Societe Nationale de Recherche et d'Exploitation Minières (SONAREM), and the President of the Soviet Technoexport concern signed a seven-year mining contract on May, 14, 1971. The contract described by Algerie Presse Service as the most important mining contract Algeria has ever made, provided for the redrafting of geological surveys, completion of geological maps, and the establishment of an accurate inventory of Algerian mineral wealth.⁴⁷

Also, a £N50m. agreement was signed in Lagos between the Nigerian Government and the Soviet Union on 16 October 1970. Under this agreement the Soviet Union will help Nigeria to establish an iron and steel industry.⁴⁸ A month later, on 24 November 1970, the two countries signed a contract for the carrying out of geological investigations in Nigeria. This contract provided for detailed investigations to be carried out for richer iron-ore deposits, coal and other raw materials required for the proposed iron and steel industry under the October 16 agreements. The proposed investigations were to be carried out by Soviet experts in collaboration with Nigerian

47. ARB(E.F.T.) Vol. 8, No. 5, June 31, 1971, p. 2049C.

48. Nigerian Morning Post, October 17, 1970.

technologists. The contract also provided for the importation of machinery and specialised equipment from the Soviet Union.⁴⁹

Both these contracts are signed within the framework of the agreements on economic and technical co-operation, and constitute efficable means of implementing agreements on economic and technical co-operation. Such contracts fall under private international law.

IX. TECHNICAL DOCUMENTS AND LICENCES

Another important aspect of the agreements on economic and technical co-operation between the Soviet Union and the African States is the common provision which requires the Soviet Government to deliver to the African States concerned the technical documents, information and licences for organizing the manufacture of the products provided for in the technical plans of undertakings and plant constructed in pursuance of the agreement.⁵⁰

49. ARB(E.F.T.) Vol. 7, No. 11, December 31, 1970, p. 1889C.

50. U.N.T.S. Vol. 457, 1963, pp. 276-278; see also, Article 12 of the Soviet-Morocco Agreement on Economic and Technical Co-operation of 27 October 1966. SDD(1971), p. 227; Soviet Tanzania Agreement on Economic and Technical Co-operation of 26 May 1966, (Article 3) *ibid.* pp. 339-40; Soviet Uganda Agreement on economic and technical co-operation of 27 March 1965, (Article 3), *ibid.* p. 351; Soviet-Ethiopia, Exchange of Notes on Economic and Technical Co-operation of 11 July 1959. U.S.S.R. and African countries Op. Cit. p. 459.

Article 4 of the Soviet-Somali Agreement of 2 June 1961 states that the documents and the necessary licences for production were to be delivered gratis

"save for the replacement of expences actually incurred by the Soviet organizations in connexion with their preparation for delivery."

It added that the documents and the licences in question were to be used solely for the purpose of the manufacture of the aforementioned products in the Somali Republic and were not to be delivered to foreign persons whether natural or juridical, except with the consent of the competent organizations, in each individual case.

Operative paragraph (h) of the earlier quoted UNCTAD recommendation on "Conditions of Economic and Technical Co-operation" states that the developed countries should

"make available to developing countries, on the most favourable terms possible, technical documentation, description of new technological processes and production experience for use in undertakings in those countries."⁵¹

In another UNCTAD recommendation on the "Transfer of Technology", it was recommended that

"Developed countries should encourage the holders of patented and non-patented technology to facilitate the transfer of licences, know-how, technical documentation and new technology in general to developing countries, including the financing of the procurement⁵² of licences and related technology on favourable terms."

51. UNCTAD Final Act and Report, E/Conf.46/141, Vol. 1, p. 57.

52. Ibid.

At the third Session of UNCTAD in April-May 1972 at Santiago, Chile, Transfer of Technology was a major item on the agenda. The item produced the unanimous adoption of Resolution 39(III) Transfer of Technology. This resolution which has been argued could serve

"As a Charter for improving the access of the developing countries to technology"⁵³

recommends among other things, that the socialist countries of Eastern Europe, in accordance with their economic and social systems, undertake to facilitate the accelerated transfer of technology on favourable terms to developing countries inter alia through agreements on trade, economic and scientific and technical co-operation. (para. 6).

It may therefore be stated that Article 4 of the Somali-Soviet Agreement, conforms with the UNCTAD recommendations and other UN documents on the transfer of technology from the developed to the developing countries. The elements mentioned in the Soviet-Somali Agreement of June 1961 above form general characteristics of agreements on economic and technical co-operation between the Soviet Union and the African States.⁵⁴ The very fact that the economic and technical agreements concentrate

53. Surendra J. Patel, Transfer of Technology and Third UNCTAD. Journal of World Trade Law (J.W.T.L.), Vol. 7, No. 2, 1973. 226.

54. See note 50 above.

on building enterprises in the government sector of the developing countries is of great importance to the overall economic development of these countries.

In economic and technical co-operation, the African States need foreign currency in order to purchase the materials stated in the agreements, as well as to pay for other items such as labour etc. However, the majority of these States very often cannot afford to finance such payments. Consequently there arises the objective need to seek foreign credits.

Resolution 1524 (XV) of the General Assembly of 15 December 1960 on "Financing of Economic Development of Less Developed Countries through long-term loans and in other advantageous ways, and insuring an increasing share in world trade for their products" recommends all member States

(a) To encourage, on a bilateral and a multilateral basis, the extension as appropriate of long-term loans, grants, or credits on favourable terms, including interest-free loans or loans at the lowest possible interest rates, the longest possible repayment periods and repayment in local currencies or in other beneficial forms...⁵⁵

55. UN.G.A.O/R. Annexes (XV) ii, pp. 41-2.

X. AGREEMENT ON ECONOMIC AND TECHNICAL CO-OPERATION AS A
LEGAL FORM OF GRANTING SOVIET CREDITS TO THE AFRICAN STATES.

Agreement on economic and technical co-operation forms the legal method by which the Soviet Union grants credit to the African States. It is a practice to insert in these agreements certain provisions on the conditions governing the granting and payment of credits. Sometimes the parties in Soviet-African economic relations do sign general payments agreements which regulates and sets rules on payments in matters relating to Economic Co-operation. (see p.264-5). According to the Soviets the credit relations of the Soviet Union with the developing countries are based on the principles of mutual respect, non-interference in internal affairs, equality and assurance of mutual benefits, together with the guarantee that credit terms do not in the slightest degree infringe the interests of the parties concerned.⁵⁶ It is further claimed that one of the aims behind the grant of credits to the developing countries is to help them establish and expand the state sectors of their economies as well as solve their problems of industrialisation.⁵⁷

56. D. Chertkov, The USSR and Developing Countries: Economic Relations. International Affairs, August 1972, p. 54.

57. V. Sergeyev, The Developing Countries and the Soviet Union
Op. Cit. p. 26.

However, Soviet economic and technical assistance to the African States is not a form of philanthropy - as the Soviets themselves are aware.⁵⁸ According to Soviet sources, at the beginning of 1970, of the entire credits to the developing countries, industry accounted for 68.7% and agriculture for 6.2%.⁵⁹ The UN Secretariat statistics noted that out of the total sum of \$9013 m. which formed the entire credits granted by the Socialist countries, the U.S.S.R. accounted for 61.34% (\$5529 m.)⁶⁰ These statistics confirm the importance of credits in the economic development of the African States, and the general economic and technical relations between the Soviet Union and the African States.

As we have noted, grants of credits are formulated in the several agreements on economic and technical co-operation: Article 5 of the Agreement on Economic and Technical Co-operation between the Soviet Union and the United Republic of Tanzania of 26 May 1966 stated the aim of the Soviet Union credits granted to the Tanzanian Republic as being to give it economic aid in carrying out the construction and exploratory work stated in

58. See, e.g. V. Sergeev, *ibid.* p. 26; "It should also be stressed that economic and technical aid to the developing countries is not philanthropy: it is implemented on the basis of mutual advantage and equality."

59. Narody Azii i Afriki, No. 5, 1971, p. 9.

60. UNCTAD, T.D. 60 1, II, 1968 as in *supra* note 59.

the agreement.⁶¹ The aims of granting credits are specifically explained in the Soviet-Somali Agreement of June 1961. Operative Article 5 reads -

"The Government of the Union of Soviet Socialist Republics shall grant to the Government of the Somali Republic a loan of 40 million roubles (one rouble = 0.987412 gramme of fine gold)... wherewith to defray the expences of the Soviet Organizations connected with the execution of planning, exploratory work and geological surveys, the cost of equipment, building machinery and materials to be delivered from the Union of Soviet Socialist Republics to Somalia... and the expences connected with the dispatch of Soviet experts to Somalia and their maintenance."

Thus Article 5 defines the volume of credit and its purposes. State credits on the basis of inter-governmental agreements between the Soviet Union and the African States play an important role for the construction of agricultural and industrial enterprises. In connection with the delivery of complete sets of equipment and the rendering of technical assistance to an African country, the Soviet Government furnishes bank credits through the Bank for Foreign Trade of the U.S.S.R. to the Bank of the African State concerned, or firm credits through Soviet foreign trade organizations to organizations and companies of the developing countries.

61. S.D.D. (1971), p. 340.

In Soviet treaty practice with the African countries, credit agreements could either be long term or short term.⁶² As a result of the length of time it takes to construct an enterprise, long term loans are often signed. There are two main forms of international credits - goods and money. In the 1945-55 period, the Soviet Union reached a number of credit agreements with all the members of the 'socialist camp' in which it supplied on credit either Soviet industrial equipment (medium-term or long-term loans), goods (short-term loans) or currency, i.e. gold or hard foreign currency.⁶³

XI. GOODS CREDIT

This form of credit rarely features in co-operation with the African States. The objects of such credit agreements are goods. The nature, quantities and prices of these goods are determined by the parties. If the objects to be delivered by the creditor state are complete sets of equipment, apparatus for an undertaking or project, the schedule annexed to the agreement specifies their number and gives their specific technical characteristics; But if they are machines, the schedule gives only their number and quantity.⁶⁴ In this type

62. Treatise on International Law, edit. Koshenikov, op. cit. p. 505.

63. J.F. Triska, R.M. Slusser. The Theory, Law and Policy of Soviet Treaties. (California, 1962) p.309.

64. Treatise on International Law (Koshenikov, loc.cit., p.505.

of situation when the Soviet Union issues commodity credits for the financing of part of the internal expenditure required for building a project, goods received on account of these credits are sold in the home market of the credit recipient and the money is used to pay the local workers and sub-contracting organizations and also to purchase local building materials.⁶⁵

Article 6 of the Soviet-Somali Agreement of 1961 states that the Soviet Government agrees to furnish the Somali Republic with Soviet goods to the value of 7 million roubles for sale in the Somali Republic, the proceeds of such sale being used by the Government of the Somali Republic in order to defray expences in local currency connected with the construction of the undertakings and the execution of the work referred to in Article 1. It adds that the nature, quantities and prices for these goods, as well as the dates of their delivery, shall be determined by the Parties subsequently. Article 6 of the Soviet-Tanzania Agreement on economic and technical co-operation of 26 May 1966 contained similar provisions.

In the Soviet Union, deliveries of these goods are usually controlled by the competent Trade organizations which sign special contracts with the foreign parties concerned on matters such as place of delivery, and the relevant conditions (C.I.F. and F.O.B. etc.) The Soviet State Planning Committee has overall supervision of the protocols involved, while the Ministry of

65. D. Chertkov, op. cit. p.56.

Economic development, Finance or the like appropriate Department in the different African States controls the organizations, firms, etc, and handles the overall supervision. In Article 6 of the Soviet-Somali Agreement above, the phrase "to the value of 7 million roubles" should not be construed as an indication that this credit is monetary in form. Rather, it gives legal clarification to the limit to which the Soviet organizations can go in the supplies of such goods, since each type of goods has its cost value.

XII. MONEY CREDITS

It has become almost an accepted practice for the Soviet Union in agreements on economic and technical co-operation with the states of Africa, to grant this form of credit. It is usually granted in roubles. The currency in which the credit is to be redeemed is often stipulated in the respective payment agreements. Thus Article 5 of the Payments Agreement between the Soviet Union and the U.A.R. of 23 June 1962 reads -

"Contracts in respect of which payments are to be made in accordance with this Agreement shall be concluded in terms of either pounds sterling or another freely convertible currency."

We shall later discuss in detail payments agreements between the Soviet Union and the African States.

However, in most cases, under the agreement on economic and technical co-operation, the money credit received by the African States is used to pay for the purchase of goods and services. The sum of credits is normally written into the agreement in figures and its equivalency given in gold. Article 5 of the Soviet Tanzania Agreement quoted earlier explains this pattern clearly. Having given the sum as 18 million roubles, it stipulated the equivalence of one rouble to 0.987412 gramme of fine gold. Recent happenings in the field of international economics are testimonies to the fact that sometimes, unexpected changes occur in the standard of gold, which might not have been envisaged at the time the parties signed their agreement. As a precaution, the agreement sometimes includes stipulations stating that in the event of any change in the gold backing of roubles, the sum of credit in the agreement will be amended to correlate with the change. The State Banks of both the recipient and crediting countries are often responsible for the necessary calculations. Sometimes the Soviet Government gives credits to an African country for the development or construction of specific projects. Thus, in November 1971, the Soviet Government gave to the Algerian Government, a loan of 170 million roubles for the development of the El Hadjar iron and steel complex.

The loan is over 15 years at 2.5% interest and involves the development of a 2,000 cubic metre blast furnace, an ore compression unit, a steel works with oxygen supplied by a new oxygen plant etc.⁶⁶

XIII. PAYMENT OF CREDITS

In the Agreement between the Soviet Union and the Somali Republic of June 1961, conditions for the repayment of credits were agreed. Article 7 states -

"The Government of the Somali Republic shall repay the loan granted in accordance with Article 5 of the Agreement in equal annual instalments over a period of twelve years, beginning one year after receipt from the Union of Soviet Socialist Republics of the complete set of equipment for each undertaking or project, or for the execution of the work, covered by the loan. Repayment of the goods loan granted in accordance with Article 6...shall be effected by the Government of the Somali Republic in equal annual instalments over a period of five years beginning with the year following that in which⁶⁷ the corresponding portion of the goods loan is utilized."

This is a very common means of regulating payments of credits during co-operation between the Soviet Union and African States. Agreement on payments can either form a component part of the whole body of an agreement on economic and technical co-operation or constitute a separate agreement which regulates and sets general principles and rules for payments in matters related to

66. A.R.B.(E.F.T.) Vol. 8 No. 11. 31 December, 1971 p. 2224A.

67. UN.T.S. Vol. 457, p.278. This particular Article has been changed in a protocol to the Agreement signed at Mogadishu on 9 May 1966. See, SDD(1971) p.331; See also Article 4 of the Soviet-Guinea Agreement on Economic and Technical Co-operation of 24 August 1959, for similar provisions; Article 6 of the Soviet-Uganda Agreement on economic and technical co-operation of 27 March 1965.

economic and trade relations between the Soviet Union and the African States. We shall be treating this general form of payments later on. That payment of credits in Soviet-African economic relations is regulated by special agreements can be due to the fact that while the majority of the African States are members of the I.M.F. the Soviet Union is not. Though the Soviet Union sent a delegation to the Bretton Woods Conference and took active part in the deliberations to the extent that some of the Articles of the Agreement were reworded to meet the points of view of the U.S.S.R., it refused to join the Fund. It even had an observer at Inaugural Meetings of the Boards of Governors of the Fund and the Bank in March 1946.

Article XI of the Agreement of the I.M.F. states members' undertakings regarding relations with non-member countries. Thus, members undertake in Section 1(i) Not to engage in any transactions with a non-member or with persons in a non-member's territories which would be contrary to the provisions of the Agreement or the purposes of the Fund; (ii) Not to co-operate with a non-member or with persons in a non-member's territories in practices which would be contrary to the provisions of the Agreement or the purposes of the Fund; (iii) To co-operate with the Fund with a view to the application in its territories of appropriate measures to prevent transactions with non-members or with persons in their territories which would be contrary to the provisions of the Agreement or the purposes of the Fund.

In the annals of co-operation between the Soviet Union and the African States, this Article has not been invoked by the Fund against any of its African members. It could therefore be assumed that co-operation of the African States with the Soviet Union has not contravened the requirements of their membership of the I.M.F.

In regulating payments, contemporary international economic relations recognize two main forms of agreements between states. (1) Payment agreements and (2) Clearing agreements. In the practice of international currency relations, these two forms are sometimes combined in a single agreement.⁶⁸

XIV. LEGAL OBLIGATION OF PARTIES

The legal obligations of the creditor and the credit recipient countries start at varying periods. Thus, according to credit agreements, the crediting country fulfils its own side of the obligation first by making available to the recipient country either goods or money, as the case may be, after which the recipient country starts to fulfil its obligations by repaying the debts incurred according to the terms of the agreement.

The UNCTAD recommended that repayments should be spread over a period of considerable length which should normally be not less than twenty years and with a certain period of grace.⁶⁹

68. Treatise on International Law (Koshenikov), op. cit. p. 508.

69. UNCTAD Final Act and Report, op. cit. p. 45.

Although there is no internationally fixed period of grace, the practice in Soviet-African agreements is a period between one and two years. The period for repayment of debts vary from 10 - 15 years.⁷⁰ Short term repayment periods are being replaced by long-term periods. The UNCTAD also recommended that some part of the loans granted might be accepted in national currencies of the debtor countries.⁷¹ In the Soviet-African States' agreements, in those cases where that portion of a loan is not repaid by deliveries of goods, payment is made in a convertible currency and sometimes local currencies as recommended by UNCTAD.⁷²

XV. INTEREST RATES ON CREDITS GRANTED

In the payments agreements between the Soviet Union and the African States, there is always a fixed rate of annual interest on the credit granted. The juridical importance of interest rates is that they form a part of the loan taken and cannot be treated or paid separately.

70. Soviet-Somali Agreement of June 1961. UN.T.S. Vol. 457. See also, Soviet-Tanzania Agreement. SDD(1971), pp.339-343; Soviet-Uganda Agreement. *ibid.*, pp. 350-354.

71. UNCTAD Final Act and Report, *loc. cit.*, p. 45.

72. Article 8 of the Soviet-Tanzanian Agreement stated that payments by the Tanzanian Government will be made in English pounds sterling or any other convertible currency. SDD(1971) p. 348; Article 7 of the Soviet-Uganda Agreement however, accepts payment of credits in the East African Shillings. *ibid.*, p. 353.

Again, the UNCTAD recommended that

"Interest rates for development loans should take into account the repayment capacity of the borrowing country. Endeavour should be made that they should not normally exceed 3 per cent. ...In cases where necessary and justified, wherever they are in excess of this figure, they should be re-negotiated to bring them down to a reasonable level."⁷³

The most common rate of interest in virtually all the economic agreements between the Soviet Union and the African States is 2.5%.⁷⁴ The Soviets claim great credit for this and state that

"Soviet credit terms are advantageous for third world countries."

Usually, they provide for an annual interest rate of 2.5-3 per cent. It is important to note this because in the world capital loan market, credits for the development of manufacturing industry are given at an interest rate of 7-8% (for example, the credit interest rate of the International Bank for Reconstruction and Development exceeds 7 per cent at present). As a result, developing countries receiving Soviet credits gain considerably from the difference in interest rates.⁷⁵ The World Bank in May 1973 approved a loan of \$9.5 million to the Power and Water Company of Gabon, for the development and improvement of the

73. UNCTAD, Final Act and Report, loc. cit. p. 45.

74. See Articles 5 of the respective Soviet-Tanzania, Soviet-Uganda Agreements quoted in reference 72 above.

75. D. Chertkov, International Affairs, op. cit. p. 55.

water supplies system in Liberville. The World Bank loan is repayable over 25 years including 4 years grace period at the annual interest rate of 7.25%.⁷⁶

There is no doubt that the Soviet interest rate is demonstrably fair, having fallen within the limit recommended by UNCTAD, but generally the developing countries wonder why the developed countries fix interest rates so high on credits granted to them, since the credit agreement by which a developed country supplies a developing country with machinery and equipment is a form of export of capital. Indirectly this is the case: but then, behind every economic or commercial contact, commercial and national interests of states come first.

Another aspect of payments agreement is the clause which specifies when the interest on the loans start to accrue. In Article 7 of the Soviet-Somali Agreement of June 1961, it is provided that

"Interest on the loans granted...at the rate of 2.5 per cent shall accrue from the date on which the corresponding portion of the loan is utilized and shall be paid during the first quarter of the year following the year in respect of which it accrues for which purpose, the date of the bill of lading shall be deemed to be the date on which the loan was utilized to pay for equipment, machines etc... and the date of the rendering of the account shall be deemed to be that on which the loan was utilized to pay for the exploratory work and other kinds of technical assistance..."

76. A.R.B.(E.F.T.) Vol. 10, No.4. May 31 1973, p. 2731B.

A bill of lading is a commercial document which confirms acceptance of goods at the port of disembarkation. In the Article 7 quoted above, it was stated that the date of the bill shall be deemed to be the date on which the loan was utilized to pay for equipment, machines etc. - which implies that the date of utilization of the loan is strictly connected with the date of delivery of goods.

Repayment of credits can be in the form either of goods or currency. Sometimes, an agreement provides for both forms.

Article 8 of the Soviet-Somali Agreement provides that

"The repayment of the loans made in accordance with this Agreement, and the payment of accrued interest thereon, shall be effected by the Government of the Somali Republic by means of deliveries to the Union of Soviet Socialist Republics of Somali goods, including cotton, oil-seeds and raw hides,"

while the remaining part states that the loan which is not repayable by deliveries of goods shall be repaid in convertible currency. Article 4 of the Soviet-Ethiopia Exchange of Notes on economic and technical co-operation of 11 July 1959, stated that repayment of the loans and the payment of the accrued interest thereon, shall be effected by means of supplies of Ethiopian goods, as might be of interest to Soviet organizations.

XVI. GENERAL PAYMENT AGREEMENTS

Most transactions as regards payments in Soviet-African economic co-operation are carried out by their state banks which, upon the authority of their respective governments, open special

loan accounts and jointly determine the technical procedure for the management of the accounts and settlements under the loans. For details involving such general matters regulating payments, the Soviet Union and the African States often sign special payments agreements which establish the procedures for opening and keeping accounts, indicate currency requirements, give the scope and nature of operations to be paid for from the accounts, determine the procedure for the conversion of currency, include gold reservations, stipulate the limits of the balance of accounts and the procedure for the liquidation of the balance and so on.⁷⁷

As may be noticed, this is a more complex agreement than the earlier one we have been treating which forms a component part of agreements on economic and technical co-operation. Separate payments agreements can be signed only after the volume of economic activities between two states achieves a large size. Such payment agreements regulate all payments whether of a commercial or non-commercial nature. In Article 2 of the Long-term Payments Agreement between the U.S.S.R. and Ghana of 4 November 1961,⁷⁸ such payments include: payments for goods exchanged

77. See Long-term Payments Agreement between the Soviet Union and Ghana of 4 November 1961. UN.T.S., Vol.655, 1969, p.183; and Exchange of Notes of 4 November 1966 on certain changes connected with the said 1961 Agreement. SDD(1971), p.131; Payments Agreement of 23 June 1962 between the U.S.S.R. and U.A.R. UN.T.S. Vol.472.

78. UN.T.S. Vol.655, 1969, p.183.

within the scope of Trade Agreement in force between both countries; all expences connected with exchange of goods such as transport, storage, customs duties, port dues, commissions, discounts, cost of advertising etc.; payments of non-commercial character such as expences for the maintenance of diplomatic and commercial representations and delegations residing in or visiting each other's country, fees, royalties, legal and court fees, payments resulting from scientific and technical co-operation, training of experts and students; any other payments to be agreed upon between the Bank of Foreign Trade of the U.S.S.R. and the Bank of Ghana.

The par value of the currency of the Contracting Parties are usually expressed in terms of gold as a common denominator or in terms of any freely convertible currency of the weight and fineness in effect at the period of contracting such agreement. Article 8 of the U.S.S.R.-Somali Agreement on economic and technical co-operation of 2 June 1961, states in the last paragraph that

"In the event of reimbursement of the loan and payment of the interest thereon being made in a freely convertible currency, the conversion of roubles into the freely convertible currency shall be effected at the rate of exchange quoted on the date of payment."

Payments of credits are sometimes made in the national currencies of the African States concerned. Thus, Article 4 of the above Soviet-Ghana Agreement reads

"Contracts, payments under which should be effected in accordance with the present Agreement, shall be concluded as a rule in Ghana Pounds. If they are concluded in any other currency, such other currency shall be recalculated into Ghana Pounds at the gold parity of the respective currency."

Article 5 gives the gold parity of the Ghana Pound at the time of contracting the Agreement as one Ghana Pound = 2.48828 grams of fine gold.

XVII. TRADE AGREEMENTS

DEFINITION AND FORMS OF TRADE AGREEMENT

The Soviet legal dictionary defines a trade agreement as an

"Agreement between states, which regulates on the basis of the most-favoured-nation clause, the national regime or the systems of preferential conditions on the import of goods (customs regime, export quota etc), sea-faring, railways, transportation, transit, and also the status of foreign legal or physical persons."⁷⁹

Trade relations have often contributed to the development of better relations between states, and on occasions have actually led to the establishment of political and diplomatic relations. However, when trade relations are conducted contrary to the rules regulating this economic institution, the result has always been damaging, and at times has disrupted other aspects of co-operation.⁸⁰

79. Yuridicheskhi Slovar. (Legal Dictionary,) Moscow, 1964, p.177.

80. See Chapter One of this work, in particular the section on the principle of non-intervention.

Trade agreements are regarded by the Soviets as the most important form of economic relations,⁸¹ and the very great importance the Soviet Government attaches to trade and economic agreements has been stated.⁸² Thus,

"Admission of a Soviet Trade Representative to a given country was interpreted by the Soviet Government as the equivalent of formal recognition⁸³ of the Soviet regime by the government of that country."

Professor J.S. Berliner also rightly noted that the Soviet Union can also use trade to take quick advantage of Western errors or difficulties.⁸⁴ A well known instance occurred during the Nigerian civil war. Most of the Western countries, (Britain included at the initial stage of the war) refused to sell arms to the Nigerian Government to prosecute the war against the rebels in its country. The Nigerian Government faced with the threat of a showdown, applied to the Soviet Government for arms sales. The Soviet Government gladly sold the various arms required by that country. As a result, the two sides quickly developed trade relations which were virtually practically non-existent before the war.

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81. Mezhdunarodno-Pravovie Formi Sotrudnichestva Socialisticheskix Gosudarstv, (International Legal Forms of Co-operation of the Socialist States.) edit. V.M. Shurshalov, (Moscow 1962) p. 187.
82. Triska and Slusser. The Theory, Law and Policy of Soviet Treaties, op. cit. p.284; See also, K. Grzybowski, Soviet Public International Law. (Durham, 1970) p.291.
83. Grzybowski, *ibid*.
84. Soviet Economic Aid. (London 1960) (abridged), p.21.

On 29 October 1971, Nigeria and the Soviet Union signed a new Trade Agreement. Speaking at the ceremony in Moscow, Mr. Wenike Briggs, stated that Nigeria's volume of trade with the Soviet Union had risen from £N99,463 in 1963 to over £N12 million in 1970. Exports to the U.S.S.R. rose from £N320 in 1963 to £N8.8 million in 1970 while imports from U.S.S.R. rose from £N100,000 in 1963 to £N3.5 million in 1970.

The Soviet Union supplies Nigeria with lorries and passenger cars and other diverse items such as welding units, cement, oil, fabrics, and sugar. In turn, it imports chiefly cocoa beans.⁸⁵ Trade relations between the U.S.S.R. and the African States develop yearly. Trade between Morocco and the U.S.S.R. increased six-fold since 1960 to reach the value of 50.1 million roubles in 1970.⁸⁶

XVIII. SUBJECTS OF AGREEMENTS

There are certain specific characteristics of trade agreements between the Soviet Union and the African States. Foremost, such trade agreements are contracted on the State level which implies that the main parties to international trade agreements are states and governments. However, it should be noted that

85. A.R.B.(E.F.T.) Vol.8, No.10, Nov.30, 1971. p.2198C.

86. A.R.B.(E.F.T.) Vol.8, No. 9, October 31, 1971. p.2169B.

Soviet trade organizations and African States' physical and juridical bodies can conclude between themselves commercial transactions to implement certain sections of a trade agreement. Article 8, operative paragraph 1 of the Trade Agreement between the Soviet Union and the Republic of Tangayika of 14 August 1963 states that

"Import and export of goods mentioned in Articles 6 and 7 shall be effected in accordance with import, export and exchange control laws and regulations in force in the U.S.S.R. and the Republic of Tangayika, and on the basis of contracts concluded between Soviet foreign trade organizations on the one hand and Tangayika's physical and juridical bodies on the other hand."

Operating under the General Agreement on Trade between Morocco and the Soviet Union, a contract was signed on 29 April 1972 between the Soviet firm Soyouz Plodo Import and the Moroccan Marketing and Export Office (OCE). Under the Contract, Morocco was to supply 100,000 tons of late oranges to the U.S.S.R. in return for the purchase by Morocco of the equivalent value of Soviet goods. This contract places the Soviet Union as the leading importer of Moroccan citrus fruit for 1971-72 above France and Germany.⁸⁷ Also, another characteristic of the trade agreements is that they define specific regimes which contracting sides will afford each other during their trade relations. Such regimes form the legal basis for the regulation of the circulation of goods and for the general control of transfer of payments.

87. A.R.B.(E.F.T.) Vol.9, No.4, May 31, 1972. p.2370C.

XIX. FORMS OF TRADE AGREEMENT

In a Soviet textbook on international law, economic agreements which regulate the exchange of goods between states are divided into

- (i) agreements on mutual deliveries of goods as a result of which a country's supplies balances those of the other country;
- (ii) agreements on supply of goods on credit by which the goods supplied by a party do not necessarily correlate with the goods supplied by the other party.⁸⁸

Apart from the above division, trade agreements in Soviet-African practice can be divided in terms of time limits. There is a growing practice of contracting long-term trade agreements between the Soviet Union and a host of African States. The UNCTAD,

"Considering that the conclusion of long-term trade agreements is one of the methods that can contribute to the solution of commercial problems between countries, at different levels of development or with different economic and social systems",

recommends the utilization of long-term trade agreements.⁸⁹

88. Treatise on International Law (Koshenikov), op. cit. p.501.

89. UNCTAD Firm 1 Act and Report, Annex A.VI.3; See also, UNCTAD Report of the Conference on its third session - Santiago, 13 April - 21 May 1972 with Related Documents. (London 1972.) Resolution 53 (III) called on the socialist countries of Eastern Europe to promote together with the developing countries, conclusion of long-term purchase agreement. p.92.

According to the findings of the trade mission from the Birmingham and London Chambers of Commerce which visited the Soviet Union in May 1963,

"The fact that the Soviet Ministry of Foreign Trade is prepared to talk about five-year contracts both for buying and selling is a very important and significant step. British industry should be ready to take full advantage of it."⁹⁰

Article 20 of the Long-Term Trade Agreement between the Soviet Union and the U.A.R. of 23 June 1962 states:

"This Agreement shall be renewed by tacit agreement for successive three years period unless one of the Parties denounces it by giving notice in writing ninety days before the end of the current three year period."⁹¹

Professors Slusser and Triska classified Soviet Economic and Trade Treaties and Agreements into seven principal types, of which the following regulate trade relations:⁹²

(i) Treaties of friendship and mutual assistance; which usually become

"with a few exceptions, a basis for future trade treaties and agreements between the Soviet Union and its respective treaty partners";

(ii) (General) Trade Treaties.

"They create a definite legal foundation for more particular economic agreements, which follow and define the 'trade political regime' upon which the contracting Parties have agreed with respect to custom dues, commercial navigation, transport...most-favoured nation clause, if any, and a host of other problems and questions associated with economic relations between the contracting parties."

90. Trade Prospects in the USSR: a survey for businessmen, Report of the Birmingham and London Chambers of Commerce, May 1963, p. 18.

91. UN.T.S. Vol. 472, 1963, pp. 72-93.

92. Triska and Slusser, Op. Cit. pp. 288-91.

(iii) (Particular) Trade Agreements. The genesis of these agreements dates back to the advent of the world economic depression in the late 1920's and early 1930's, when the contracting parties of the Soviet Union were forced to resort to various restrictions on their imports while trying to expand their exports. To protect its interests under these conditions, the Soviet Government turned to agreements designed to regulate the turnover of goods, establish the volume and kind of goods intended for shipment, and regulate the means and conditions of payment. In the early period, these agreements were, as a rule, concluded for a period of one year and were annually renewed, but as from 1946 the agreements began to be concluded for longer periods of time, which provided for automatic extension after the expiration of the original term.⁹³

In this way, the now common practice of contracting long-term trade agreements came into existence. In accordance with the then applied practice,

"The contracting parties were bound merely to co-ordinate annually the volume and kind of goods for⁹⁴ shipment and to sign protocols on the turnover of goods."

93. Ibid. p. 290.

94. Ibid.: For Soviet classifications of International Economic and Trade Treaties and Agreements, see - Treatise on International Law (Koshenikov) Op. Cit. p. 488. Such treaties and agreements were classified into eight types in accordance with the objects which they regulate. See also, Kurs Mezhdunarodnovo Prava v chesti tomakh. (Treatise on International Law in Six Volumes) Vol. iv. pp. 237-8; Using the same method-objects of regulation, these agreements and treaties were classified into 7 types.

Of the three types mentioned in Professor Triska and Slusser's classification, the last one (trade agreement) is applied in the regulation of trade between the Soviet Union and the African States. In general economic co-operation with the developing countries, the Soviet Union rarely signs economic or trade treaties.

"With reference to the developing countries, if the pre-war agreements with Turkey and Iran are excluded, the Soviet Union did not sign any trade treaty."⁹⁵

The only treaty ever signed between the Soviet Union and any African State was the Treaty of Friendship with the Arab Republic of Egypt, which in Article 5 referred to some aspects of economic and trade relations between the two countries.⁹⁶ Trade agreements between the Soviet Union and the African States form the legal basis for regulating their trade relations; and they regulate wide span of objectives which are mutually determined by the two sides contracting such agreements.

XX. PRINCIPLES REGULATING TRADE AGREEMENT

The preambles of these agreements stipulate on what principles of international law they are contracted, such as equality and mutual benefit, non-interference and others. The contents and

95. Treatise on International Law in Six Volumes, *ibid.*, p.246.

96. Soviet News. 1 June 1971, p.149.

scope of these agreements also depend in each case on the political conditions existing between the Soviet Union and its African partner, as was confirmed by Mr. Breshnev. He wrote:

"The degree and concrete forms of relations between the Soviet Union and the developing nations largely depend on the general political course of each and every state."⁹⁷

XXI. REGULATION OF IMPORTS AND EXPORTS

In the trade relations between the Soviet Union and the African States, trade agreements regulating the particular trade and exchange of goods and payments conditions and procedures are usually accompanied by lists of goods to be exchanged, either in terms of contingents of basic goods in cases of long-term agreements or in terms of main goods to be traded in case of short term agreements. This list of goods are usually referred to as "schedules A and B", and they are sometimes annexed to the main agreements.

Article 7 of the Long-Term Trade Agreement between the U.S.S.R. and U.A.R. of 23 June 1962 states that

"Schedule A list goods for export from the United Arab Republic to the Union of Soviet Socialist Republics"

and that

"Schedule B lists goods for export from the Union of Soviet Socialist Republics to the United Arab Republic".

97. 50 Let Vilikh Pabied Socialisma. (50 years of the Great Victory of Socialism.) (Moscow 1967), p.27.

The deliveries of goods between these countries according to the agreement was for a period of three years

"from 1 January 1963 to 31 December 1965".

The African countries mainly export agricultural products to the Soviet Union in return for machinery and equipment. An important aspect of the establishment of lists of goods is the legal guarantee the parties obtain of steady importations of their products. Especially to the African States this type of guarantee of having a constant importer of their goods over a number of years, enables them to arrange their economic development programme conveniently without any doubt about obtaining favourable markets for their exports. Thus, both parties are bound by future fixed and guaranteed delivery obligations.

XXII. IMPORT AND EXPORT LICENCES

For import and export to take place, it is essential to obtain licences connected with such activities. Thus in the Soviet-U.A.R. Agreement,

"The two Parties undertake to issue the necessary import and export licences in good time for the full amount of the quotas of goods listed in the above-mentioned schedules A and B and shall take all the necessary measures to ensure that deliveries are duly made in accordance with those schedules."⁹⁸

98. UN.T.S. Vol. 472, 1963, p.74, Article 7.

It does occur at times that the Soviet organizations and the African States' legal or natural persons conclude commercial contracts on the import and export of goods outside the lists of goods as provided in the trade agreements, the competent organs of both governments

"shall consider matters relating to the issue of the necessary import and export licences for such goods in a spirit of genuine co-operation."⁹⁹

It may be noted, therefore, that import and export licences play an important role in the development of trade relations, and states have always been prompt in the issue of these licences.

XXIII. PRICES OF GOODS

It is improper and inequitable for an exporting state to fix prices unilaterally on the goods to be exported. Such an act has a major defect: it may involve a state (exporter) fixing more than a unified price on a particular class of goods.¹⁰⁰

99. Ibid. Article 8; See also Soviet-Sierra Leone Agreement, Article 3, SDD(1971), p.337; Soviet-Uganda Agreement, Article 7, SDD(1971), p.348.

100. Professor Oppenheim stated that "Experience has shown that the fall in prices following upon excessive and unregulated competitive supply of such goods is productive of avoidable economic hardship and unsettlement." Oppenheim, International Law, op. cit. p.974.

Trade agreements usually have a clause dealing with this problem. Article 9 of the Soviet-U.A.R. Agreement, for instance states that

"the deliveries of goods provided for in this agreement shall be made at competitive world markets for the goods in question."

Article 9 of the Soviet-Sierra Leone Agreement states that concurrent prices on similar types of products and quality would be applied in cases where world prices could not be fixed. Furthermore, in those cases where the world price and the local price could not be established, the price of such goods would be agreed in their contracts.

At the 23rd session of the UN General Assembly in October 1968, Mr. A. Gromiko, the Soviet Foreign Minister, stated that the Soviet Government supports the proposal to establish international agreements through which in the world market, prices of fuel, raw materials and agricultural products would be increased, and prices of industrial products exported to the developing countries would be cut. According to Professor Solodnikov, such international agreements must fix prices on the basis of the real costs of production and not in reference to the monopoly of prices as

"established by imperialist capital and imposed on the world market".¹⁰¹

101. Solodnikov, op. cit. Vol. 6, 1971, pp. 4-5.

Rejecting the proposal of the developing countries that the Soviet Union should establish in a one-sided order special prices on goods in trade agreements with them, Professor Solodnikov stated

"We suppose that such a way cannot improve the condition of trade in the international market,"

adding that

"Foreign trade in which not one but a lot of prices on one and the same product exist, would lead to chaos and voluntarism in price formation."¹⁰²

The basic motive behind such views became evident when he declared:

"Taking into account that the foreign trade of the developing countries is about 75-80 per cent capitalistic orientated, it is impossible to achieve radical changes in world prices only by way of changing prices on the basis of agreement on which the developing and socialist states trade among themselves as the latter accounts for only 7-8 per cent of foreign trade turnover of the third world countries."¹⁰³

XXIV. RE-EXPORTATION OF GOODS

Trade agreements between the Soviet Union and the African States approach the question related to the re-exportation of goods in two major ways. Article 12 of the Soviet-U.A.R. Long-Term Trade Agreement of 1962 forbids the re-exportation of goods imported from one country into the other without the prior approval of the competent organs of the Contracting Party which

102. *ibid.* p.5.

103. *ibid.*

is the country of origin of the goods in question. The position is clear from this Article that either of the Parties would be violating agreed rules if it decided to re-export goods received to third countries without the approval of the other party. The other variant related to re-exportation of goods is expressed in Article 10 of the Trade Agreement of 8 May 1964 between the Soviet Union and Uganda. The Article allows for the re-exportation to a third country of goods imported from one country into the other without the prior approval of the competent organs of the Contracting Party from whose territory such goods are imported. There are however exceptions applying to the re-exportation of certain goods which might be defined by the Contracting Parties.

XXV. THE MOST-FAVOURED-NATION CLAUSE.

In all the trade agreements between the Soviet Union and the African States, there are clauses stating that the Contracting Parties shall grant most-favoured-nation treatment in all matters relating to trade and navigation.¹⁰⁴

104. UN.T.S., Vol. 672, p.305. On the questions related to the most-favoured-nation clause in trade agreements, see, Treatise on International Law in Six Volumes, Vol. iv., op. cit. pp.247-273; Triska and Slusser, op. cit. pp.333-47; D.M. Genkin, Printsip naibolshevo blagapriyastvavaniya v togovikh dagavorov gosudarstv. (The Principle of Most-Favoured-Nation Clause in the Trade Agreements of States. S.G.I.P., Soviet State and Law, Vol. 9, 1958.

In Article 1 of the Soviet-Cameroon Trade Agreement of 24 September 1962, it was stated that the

"two Contracting Parties shall mutually grant each other the most-favoured-nation treatment in all matters relating to trade between both countries. The most-favoured-nation treatment shall apply, in particular, in respect of custom duties and other taxes and charges connected with importation or exportation of goods, in respect of the methods of levying such duties, taxes or charges, as well as in respect of rules and formalities to which goods are subject during customs handling."¹⁰⁵

By the inclusion of this clause in their trade agreements, the Parties guarantee one another conditions just as favourable as those granted in the past or in the future to any third state. Through the clause, each of the Parties obligates itself to grant privileges and conditions to the other Party, equally favourable (in the field of commerce and industry, in all customs matters in particular as regards duties, taxes and other charges; in import and export transactions; in the legal status of citizens and corporations; in navigation, and so on) as it had offered or would offer to any third State.¹⁰⁶

The principle, as may be noticed from the various objects it concerns, is applied as a rule only to matters relevant to economic relations, and indeed, only to those aspects of economic

105. UN.T.S. Vol. 672, (1969), p. 305.

106. International Law in Six Volumes, Op. Cit. pp. 247-48; See Article 1 of the Trade Agreement between the U.S.S.R. and the Republic of Tangayika of 14 August 1963.

relations as might be stated in the agreements.¹⁰⁷ General principle 8 of the UNCTAD Final Act recommends that international trade should be conducted to mutual advantage on the basis of the most-favoured-nation treatment and should be free from measures detrimental to the trading interests of other countries. It further required that the developed countries should grant concessions to all developed countries and extend to developing countries all concessions they grant to one another.¹⁰⁸

107. See Lord McNair Law of Treaties, Oxford, 1961, p.287 on Lloyds Bank v. De Ricqles and De Gaillard case. The case was before a French court. The Lloyds Bank which as a plaintiff had been ordered to give security for costs, invoked Article 1 of an Anglo-French Convention of 28 February 1882. The Convention was intended to regulate the commercial and maritime relations between the two countries, as well as the status of their Subjects. Article 1 provides inter alia mutual granting immediately and unconditionally the benefit of every favour, immunity or privilege in matters of commerce or industry which have been or may be granted to a third nation. On the basis of this Article, Lloyds Bank claimed the benefit of the provisions of a Franco-Swiss Treaty of 15 June 1889, which gave Swiss nationals the right to sue in France without being required to give security for costs. The court rejected the claim on the ground that a party to a convention of a general character such as the Anglo-French Convention regulating the commercial and maritime relations of the two countries could not claim under the most-favoured-nation treatment clause the benefits of a special convention such as the Franco-Swiss Convention, which dealt with one particular subject.

108. Final Act and Report, UNCTAD, op. cit. p.20.

The UNCTAD further recommends that the developed countries should not in granting these or other concessions, require any concessions in return from developing countries. Article 1 of the Soviet-Sierra Leone Trade Agreement of 28 October 1965, having stated that both countries shall grant each other most-favoured-nation treatment in matters related to trade between them, added that this provision shall not however apply:

- (a) to advantages which either of the Contracting Parties granted or continue to grant to her neighbouring countries with the purpose of facilitating frontier trade;
- (b) to advantages resulting from membership of a Customs Union to which either of the Contracting Parties belongs, etc.

As may be noticed, the most-favoured-nation clause in the Soviet-African Trade Agreements contain exceptions to the general statement providing that no restrictions or prohibitions on the imports of goods from, or the export of goods to, the territory of the other party might be employed if such measures are not applied to other countries. Whereas in the earlier Soviet-African trade agreements such exceptions were absent, the introduction of these exceptions in the later agreements is a step forward in their trade relations.

However, the view has been expressed that,

"With respect to Soviet export, the most-favoured-nation clause grants the Soviet Union all the advantages normally associated with this concept. The U.S.S.R. receives in the capitalist states all the means available to compete successfully with other exporters. At the same time, the Soviet Union can open or close its export gate any time it wishes, while its contracting parties cannot, under the most-favoured-nation clause, even hinder its export."¹⁰⁹

The reason for this is that while trade activities are under government control in the Soviet Union, in the capitalist countries and the developing countries, a higher percentage of trading is done on a private basis. These private firms cannot invoke the most-favoured-nation clause. If they wish to do so, they must channel their trade through their governments.

XXVI. THE SIGNIFICANCE OF THE MOST-FAVOURLED-NATION CLAUSE IN SOVIET-AFRICAN TRADE AGREEMENTS ON THE WORKING OF ARTICLE 1 OF G.A.T.T.

In view of the fact that the Soviet Union is not a member of the General Agreement on Tariffs and Trade, and all the African trading partners of the Soviet Union are members of this Organisation, it is considered worthwhile examining the effect of the M.F.N. clause in Soviet-African agreements on the working of similar provisions of the G.A.T.T. Article 1(1) of G.A.T.T. can be divided into two concepts; (1) the scope of the clause (2) the obligations of the clause. M.F.N. clauses in all Soviet-African agreements are divisible into these concepts as well.

109. Triska and Slusser, op. cit. p. 20.

The scope, both in Soviet-African agreements and in Article 1 paragraph 1 of G.A.T.T. covers the following:

- (1) Custom duties and charges of any kind imposed on or in connection with:
 - (a) importation,
 - (b) exportation, and
 - (c) international transfer of payments for imports or exports;
- (2) The method of levying such duties and charges;
- (3) All rules and formalities in connection with
 - (a) exportation and
 - (b) importation;
- (4) All matters which cover internal taxes and regulatory laws.¹¹⁰

The 'obligation' part of the M.F.N. clause in G.A.T.T. states that

"any advantage, favour, privilege or immunity granted by any Contracting Party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."

Soviet-African trade agreements are not uniform with respect to the formulation of obligations of the Contracting Parties on this clause. Different trade agreements contain different

110. See, G.A.T.T. Basic Instruments and Selected Documents, Vol. III, Article 1, para.1 (Geneva, 1958) p.4; also, Trade Agreement between the Soviet Union and the Federal Republic of Camerouns of 24 September 1962. (Article 1). UN.T.S. Vol. 672, 1969, p.305; Soviet-Tangayika Trade Agreement of 14 August 1963. UN.T.S. Vol. 493, 1964 (Article 1) p.197, etc.

formulations. However there are two main variants. Article 1 para.4 of the Soviet-Tanganyika Trade Agreement of 14th August, 1963 states

"any advantage, favour, privilege or immunity which has been or may hereafter be granted to (by) either Party in regard to the matters referred to in paragraph 1 of this Article to any product originating in any third country or consigned to the territory of any third country shall be accorded immediately and unconditionally to the like products originating in or consigned to the territory of the other Party."

The second variant can be noted in a Soviet-Cameroon Agreement. Article 1 of the Soviet-Cameroon Trade Agreement of 24th September, 1962 having stated the scope of the M.F.N. treatment that would apply between the parties, stated that provisions of the M.F.N. clause shall not apply to:

" (a) goods imported from the U.S.S.R. but originating from the territories of third countries not enjoying the most favoured nation treatment in the Federal Republic of Cameroons as well as goods imported from the Federal Republic of Cameroons but originating from the territories of third countries not enjoying the most favoured nation treatment in the U.S.S.R."

The situation as contained in the M.F.N. clause of G.A.T.T., as related to Soviet-African trade agreements, can be analysed thus:

Advantages granted by an African member of G.A.T.T. to the Soviet Union by virtue of an existing trade agreement between them, must also be extended to all contracting parties of G.A.T.T. with whom such an African State has bilateral trade agreement.

Similarly, in the case of the above Soviet-Tanganyika Agreement of 14th August, 1963, the Soviet Union, though not a member of the G.A.T.T. by virtue of Article 1 para.4 is entitled to enjoy all advantages

granted by Tanganyika (as a member of G.A.T.T.) to any G.A.T.T. member. But in the Soviet-Camerouns Agreement of 24th September, 1962, if the goods imported from the USSR originate from a third country with which Camerouns has no M.F.N. clause, the Republic of Camerouns is not obliged to grant to the Soviet Union those advantages it grants to a G.A.T.T. member, by virtue of the entire G.A.T.T. agreement.

The question as regards 'origin' or 'Nationality' of goods has not yet been resolved, at least among the G.A.T.T. members.¹¹¹ The

Contracting Parties resolved

"that the time is not yet ripe for attempting to obtain general acceptance by governments of a standard definition of origin."¹¹²

Article 5 of the Soviet-Tanganyika Agreement resolved the problem by stating

- " 1. For purposes of this Agreement goods originating in the Union of Soviet Socialist Republics shall be regarded as Soviet products and goods originating in the Republic of Tanganyika shall be regarded as Tanganyikan products.
2. The country of origin shall be deemed to be the country where a product was produced and manufactured or underwent its last substantial processing, or in the case of non-processed agricultural products the country where the products were actually produced."

111. J.H. Jackson. World Trade and the Law of G.A.T.T.
(New York, 1969) pp. 464-469

112. G.A.T.T. Doc. L/179 and addenda (1953)

The significance of the most favoured nation clause in Soviet-African Trade Agreements on the working of G.A.T.T. provisions is enormous. Truly, G.A.T.T. did introduce some reductions in the tariffs and other restrictions on world trade, but these have been of benefit mainly to the industrial countries and the developing countries generally have obtained very little benefit.

Two reasons were adduced for this situation (a) The Havana Charter is established on the classic concept

"that the free play of international economic forces by itself leads to the optimum expansion of trade and the most efficient utilisation of the world's productive resources; rules and principles are therefore established to guarantee this free play."

(b) these rules and principles have not strictly been complied with.

As related to (a) above, whereas the various Afro-Soviet agreements take into consideration the fact of the structural dissimilarities between the contracting parties, the free play concept does not consider the structures of the industrially advanced countries and the developing countries. There is a wrong assumption of homogeneity which makes reductions and restrictions equivalent everywhere to all the members.¹¹³

113. UNCTAD Policy Statements Vol.11 (New York, 1964) pp. 17-18; J.H. Jackson. *op.cit.* p.665.

In a recent speech to foreign diplomatic corps in Zaire, President Mobutu Sese Seko stated that relations between poor and rich countries needed to be re-appraised. "Thus it is necessary to review the philosophy of even the G.A.T.T. trade agreements which preach free exchange in free competition", adding that one could hardly speak of free competition when the partners were not competing with equal weapons.

* West Africa, January, 28th, 1974. p.106.

XXVII SETTLEMENT OF DISPUTES.

In Soviet treaty practice, there is a lack of uniformity with reference to commercial arbitration or settlement of commercial disputes based on a policy of bilateralism. The differences vary from treaty to treaty. Although commercial arbitration has been introduced in Soviet-Trade agreements with some foreign countries,¹¹⁴ it has never been so in Soviet trade agreements with the African States. Or, it may, perhaps, be more accurate to state that the intention of the parties to submit their disputes to commercial arbitration has never been clearly stated as such in their agreements.

In the various agreements between the Soviet Union and the African States the clearest provision so far on the settlement of disputes arising from trade agreement is stated in the final provisions. Article 11 of the Trade and Payments Agreement between the Soviet Union and Somali of 2nd June, 1961, reads:

"In the event of any dispute relating to the interpretation or application of this Agreement, the Contracting Parties shall consult together in a spirit of friendship with a view to finding an appropriate solution or, at the request of either Party, shall convene for this purpose a Mixed Commission composed of representatives of the two Governments."

Most of the other Soviet-African trade agreements in fact refrain from mentioning the word 'dispute'. Thus the Soviet-U.A.R. Long-Term Trade Agreement in Article 16 states:

"In order to facilitate the implementation of this Agreement, the two Parties agree to consult each other on any questions arising out of or in connection with this Agreement. For this purpose they will establish a Mixed Commission which will meet at the request of either Party in Moscow or in Cairo not more than fortyfive days after such a request is made, and will, where necessary, make appropriate recommendations."

114. Triska and Slusser, op.cit. pp. 353-55, 381-88.

Indeed, the Soviet-Tanganyika Trade Agreement of August, 1963, (like its counterparts the Soviet-Sierra Leone Trade Agreement (Article 12) of 26th April 1965 and the Soviet-Uganda Trade Agreement (Article 13) of 8th May, 1964), in Article 13 states:

"Both Parties shall consult together upon the request of either Party on matters of commercial relations and the implementation of the present Agreement."

This provision is silent on the establishment of a Mixed Commission.

It is hard to say whether the omission of the settlement of disputes by commercial arbitration in Soviet-African trade agreements is deliberate or not.

However, the Soviet thesis of peaceful co-existence of States with different social systems demands pacific settlement of international disputes.¹¹⁵

"The Soviet Union, other socialist States and also the peaceloving states of Asia, Africa and Latin America attach great importance to the peaceful means of settling international disputes, having seen in the application of these means and methods, the only possible way of settling disputes, maintenance of world peace and security."¹¹⁶

It appears, therefore, from these agreements that both parties prefer to settle their disputes in a friendly manner rather than submitting them to local courts. However, there have been instances when the African States have not been patient enough for such pacific settlement. This has been so on most occasions when officials of the Soviet Trade Mission have been accused of engaging in activities incompatible with their status.¹¹⁷

115. Treatise on International Law in Six Volumes, vol. IV, op.cit., pp.340-1

116. *ibid*: See also Chapter five of this work, especially the section on Pacific Settlement of Disputes.

117. See chapter one of this work, under the various principles regulating co-operation between the two sides, and the violation of these principles by the Soviet Union as alleged by the African States.

XXVIII. LEGAL REGIME AND FUNCTIONS OF SOVIET TRADE REPRESENTATIVES IN THE AFRICAN STATES.

In the trade agreement practice of the Soviet Union with the African States, usually we come across another agreement - in the form of a protocol, an exchange of letters or notes, and rarely in the form of a separate agreement - on the Trade Representative of the Soviet Union in a particular African State.¹¹⁸ This is a special form of agreement peculiar to Soviet trade relations with foreign countries. Right from its inception, the Soviet Government has insisted on its particular, commercial, non-reciprocal right to the establishment of its own permanent trade delegations abroad, which, as official organs of the Soviet Government, would perform abroad, functions relating to the trade rights and duties belonging to the Soviet State on the basis of its foreign trade monopoly.¹¹⁹

There are numerous definitions of the term 'foreign trade monopoly'. The 1954 2nd edition of the Large Soviet Encyclopaedia defines it as

"the concentration of all foreign trade operations into the state's hands"

and declares it to be a new system of economic relations of the Soviet Union with other states. In his book,¹²⁰ Professor Mironov defines State foreign trade monopoly as implying a

"planned method of implementing foreign trade operations."

118. See Soviet-Ghana Protocol of 2nd July, 1961, U.N.T.S. vol.655, p.172 Soviet-Cameroon Exchange of Notes of 18th August, 1964, 11th February and 15th February, 1965. S.D.D., *ibid.* pp.225-6.

119. Triska and Slusser. *op.cit.* p.329; The first act of the Soviet Government at establishing its foreign trade monopoly was the Decree of 22nd April 1918 on the nationalisation of foreign trade, followed by the Decree of 30th April 1919 on the means of implementing the nationalisation of foreign trade. See, N.V. Mironov, Pravovoe Regulirovanie Vneshnikh Snoshenii SSSR. 1917-1970. Legal Regulation of the Foreign Relations of the U.S.S.R. 1917-1970. (Moscow, 1971) p.254; also Treatise on International Law in Six Volumes, *op.cit.* vol.IV. p.112.

120. N.V. Mironov. *op.cit.* in note 119 above p.255.

He further stated that at the initial stage of the establishment of a trade representative, there were three types:

- (A) Trade sub-agency
- (b) Local Trade Agents
- (c) General Trade Agency

This division is no longer followed in the Soviet Union. Subsequent laws and Government acts refer only to trade representatives and trade agents.¹²¹

The legal status of Soviet foreign trade representatives is defined in the Soviet Decree on Trade Delegations and Trade Agencies of the U.S.S.R. Abroad of September 13th, 1933. However, the Soviet Decree on Trade Delegations and Agencies, in the opinion of the writer, is a unilateral act which at that stage is an internal law of the Soviet Union, and therefore is of no legal significance outside Soviet territory. As has been rightly pointed out,

"just as the right of legation is no veritable legal right in the absence of a treaty, the right of a trade delegation to diplomatic privileges and immunities... is no legal right at all unless expressly accepted by Soviet Contracting parties... Only treaties and agreements then could endow the U.S.S.R. with the right to create and maintain Soviet official trade delegations abroad." 122

This view is correct since the law of each state constitutes an independent legal order with its own sources and characteristics which often differ from those of other states.

121. *ibid.* p.257.

122. Triska and Slusser, *op.cit.* p.329.

Certain Soviet authors view the above expositions in a different light. Thus, Professor L.A. Lunts claimed that Soviet trade representatives should be recognised by organs of all foreign States even in the absence of any international agreement.¹²³

However, not all Soviet writers support this view. Thus, Dr. Pozdniakov stated that the decision to establish trade representatives in a foreign country is always taken by the Government of the U.S.S.R., but in order to implement this decision, the consent of the foreign country concerned is inevitable.¹²⁴ Professor Licovskii likewise proved that if Sovereign State 'A' intends to undertake activities on the territory of State 'B' it is essential that State 'B' gives its consent.¹²⁵

However, judging from the numerous agreements concluded with foreign countries, there is no doubt that the establishment of a Soviet foreign trade representative in a foreign country is not a unilateral act of the Soviet Government but needs the approval of the foreign state concerned. There are, at the time of writing, Soviet Trade Representatives in 80 countries.¹²⁶ African States inclusive, and such trade representatives - at least in the African States - have always been established by agreement. The African States, like most Western countries, have no trade representatives of similar characteristics as

123. Mezhdunarodnoe Chastnoe Pravo. International Private Law (Moscow 1963) p.67.

124. V.C. Pozdniakov. op.cit. p.87.

125. Mezhdunarodnoe Pravo. International Law (Moscow 1970) p.248.

126. N.V. Mironov. op.cit. p.262.

those of the Soviet Union in the U.S.S.R. Questions related to trade are always handled by a Commercial Attache, usually seconded to the Embassy by the Ministry of Trade of the African State concerned. This is the case in the African States where unlike the Soviet Union, there is no State Monopoly of Foreign Trade.

The preamble of the Protocol on the Legal Status of the Trade Representation of the U.S.S.R. with the Republic of Ghana of 2nd July, 1961, states that in accordance with Article 12 of the Trade Agreement between the two countries, they

"have agreed to determine the following legal status of the Trade Representation of the U.S.S.R. in the Republic of Ghana."

In his letter of 9th March, 1965, the Malian Minister of Economic co-operation and technical aid states that in reference to the discussion between the Commercial Attache of the Soviet Embassy in Mali and an official of the Cabinet, the Government of Mali agrees to allow the establishment of the Soviet Trade Representative in Mali.

From these two documents, the element of consent is clearly visible, for without it, it would have been impossible for the Soviet Government to establish its trade representative in these countries.

Article 1 of the above quoted Soviet-Ghana Protocol states the functions of the trade representative as:-

- (a) to promote the development of trade relations between the two countries.
- (b) to represent the interests of the Soviet Union in all that pertains to its foreign trade.
- (c) to carry on the trade between the two countries.

Apart from stipulating the fundamental rights and obligations of the representative (as outlined in the preceding paragraph), Article 2 states that the Trade Representative forms an integral part of the Soviet Embassy in Ghana with its residence in Accra. It further states that the trade representative and two deputies shall have all the privileges and immunities accorded to the members of the diplomatic missions as part of the status of the Soviet trade representative. Article 2 further provides for the immunity of the offices and premises occupied by the trade representative which of course

"shall be used exclusively for the purposes contained in Article 1 above."

It also has the right to use cipher.

In all agreements on trade representatives, the norms on its privileges and immunities have become an integral part of such agreements. According to Soviet scholars,

"Common to such agreements is the unconditional recognition of diplomatic immunity of trade representative." ¹²⁷

Professor Korolenko feels that the privileges and immunities should be regarded as natural without being specifically mentioned because they stem from the basic principles of international law, inasmuch as the trade representatives of the Soviet Union are organs of a sovereign state. ¹²⁸

127. Treatise on International Law in Six Volumes. vol.IV. op.cit. p.124.

128. Triska and Slusser. op.cit. in note above. p.330.

The argument is put forward that the absence of diplomatic relations does not excuse a state from recognising the Soviet trade representative as an integral part of the Soviet Embassy. This was the case at the time of the establishment of a Temporary Trade Representative of the Soviet Union in the Cameroon on 24th September, 1962. At that time there was no Soviet Embassy in the Cameroon. However, the note which constituted the agreement simply stated that the Soviet Trade Representative will form an integral part of the Soviet Embassy in the Cameroon when the Soviet Embassy is established.¹²⁹ It might be assumed that while the establishment of a Soviet Embassy in a foreign country is no guarantee for the establishment of a trade representative, the reverse is the case if it happens that a Soviet trade representative is first established, since it has been recognised that the Soviet trade representative is an integral part of a Soviet embassy.

Since, as noted above, one of the main functions of the Soviet trade representative is to represent the interests of the Soviet Union in all that pertains to its foreign trade, the trade representative acts on behalf of the Soviet Government in matters of trade, and therefore, as Article 3 of the Soviet-Ghana Protocol confirms, the Soviet Government will be responsible for all transactions which will be concluded and guaranteed in the Republic of Ghana on behalf of the Trade Representation and signed by duly authorised persons.

129. S.D.D. (1965) p.381.

According to the 1933 Decree, the Soviet Government agreed within limits determined in the respective treaties and agreements to subordinate its representatives to the local jurisdiction of the countries within which they operate.¹³⁰ In contemporary Soviet literatures, efforts are being made to exempt trade representatives from total local jurisdiction of the countries where they operate since a trade representative is an organ of the state.¹³¹

However, Article 4 of the Soviet-Ghana Protocol clearly indicates that the Soviet Union is willing to allow any question which may arise in respect of commercial transactions entered into by the Trade Representation to be determined by the courts of Ghana in accordance with the local laws of the Republic of Ghana. Finally, the Soviet Trade Representation is not subject to the rules regulating trade registration (Article 6), since trade representatives as pointed out by Professor Korolenko: are organs of a sovereign state and comprise an alienable part of the Soviet diplomatic representation they naturally cannot be subjected to commercial registration. In the opposite instance, one could only arrive at juridical absurdity, i.e. at the point of regarding the Soviet trade representative as being equal to a mere individual merchant or a firm.¹³²

130. Triska and Slusser, op.cit. in note above, p.331.

131. See M.M. Boguslavskii. Immunitet Gosudarstva. State Immunity (Moscow 1962) Treatise on International Law in Six Volumes, (Moscow 1968)

132. As in Triska and Slusser, op.cit. in note above, p.331.

It is considered an essential aspect of the trade relations between the Soviet Union and the African States to discuss as above, the legal status of the Soviet trade mission or representative, since this practice is peculiar to trade relations between the Soviet Union and foreign countries. There is little doubt that the establishment of Soviet trade representative in an African State serves the interests of the Soviet Government rather than those of the African States, but since those African States concerned have in principle accepted the establishment of this representation in their countries, it helps to promote the mutual development of trade between them.

CHAPTER VLEGAL ASPECTS OF CULTURAL AND SCIENTIFIC CO-OPERATION1. UNESCO AND PRINCIPLES OF INTERNATIONAL CULTURAL CO-OPERATION

The fourteenth session of the United Nations' Educational, Scientific and Cultural Organisation (UNESCO) laid down certain principles to regulate cultural co-operation among states in its "Declaration of the Principles of International Cultural Co-operation" of 4th November, 1966.¹ The Soviet Union and the African States are members of this important organisation and participated in the formulation of these principles which States have come to apply in cultural co-operation between themselves.

The Preamble of the Declaration opened with the now famous phrase of the UNESCO Constitution:

"Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed",

adding:

"that the peace must be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind".

It further recalled that section of the Constitution which states that the wide diffusion of culture and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfill in a spirit of mutual assistance and concern. The preamble finally considered that

1. Declaration of the principles of International Cultural Co-operation.
UNESCO General Conference, 4th November, 1966.

"despite the technical advances which facilitate the development and dissemination of knowledge and ideas, ignorance of the way of life and customs of peoples still presents an obstacle to friendship among the nations, to peaceful co-operation and to the progress of mankind."

The Declaration then listed a number of principles which are phrased in eleven Articles. Thus, Article 1 (i) stated that each culture has a dignity and value which must be respected and preserved; and Article 1 (ii) grants the right to and imposes the duty on every people to develop its culture. Indeed, the non-recognition of the value and dignity of certain cultures has motivated the wrong application of the term "primitive" and "civilised" to culture as a category.

Of importance is the application of this term since "The notion of 'civilised' nations" (as referred to in Article 38 (3) of the Statute for the Permanent Court of International Justice)

"must be taken to refer to those legal systems operating in a politically and socially developed State. The newly independent Afro-Asian States, however, dislike the use of the word 'civilised' a notion which they regard as emanating from the traditional distinction between civilised and non-civilised nations."²

2. Dr. Felix Okoye, International Law and the New African States (London, 1972) p.195; see also Dr. T.O. Elias - African States and the Development of International Law (Leiden, 1972).

According to Soviet sources, the term is not acceptable as well.

"Present day international law precludes the division of States into 'civilised' and 'non-civilised', 'Christian' and 'non-Christian', and their discrimination on these grounds. The reference to 'civilised' nations in the International Court Statute now sounds as a complete anachronism."³

According to Article III of the above Declaration, the sphere of international cultural co-operation

"shall cover all aspects of intellectual and creative activities relating to education, science and culture".

Of importance is Article IV which spells out the aims of such co-operation in its various forms, bilateral or multilateral, regional or universal, as (a) To spread knowledge to stimulate talent and to enrich cultures; (b) To develop peaceful relations and friendship among the peoples and to bring about a better understanding of each others way of life; (c) To contribute to the application of the principles set out in the United Nations declarations, namely, Declaration of Human Rights, Declaration on the granting of independence to colonial countries and peoples, Declaration on the elimination of all forms of racial discrimination, Declaration on the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty, and other related declarations; (d) To enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits, and to contribute to the enrichment of cultural life.

3. Contemporary International Law ed. (Tunkin) (Moscow, 1969) p. 30.

Some of the principles enumerated are inter-related, but there are a number of other distinctive components. Thus Article VII (i) stated that

"Broad dissemination of ideas and knowledge based on the free-exchange and discussion, is essential to creative activity".

The principle of reciprocity is stated in Article VIII; and Article X stresses the importance of cultural co-operation in the moral and intellectual education of young people.

Finally,

"In their cultural relations, States shall bear in mind the principles of the United Nations. In seeking to achieve international co-operation, they shall respect the sovereign equality of States and shall refrain from intervention in matters which are essentially within the domestic jurisdiction of any State" (Article XI (i));

Although it can not be claimed that the enumerated principles have exhausted all aspects of cultural co-operation, the principles probably comprise all those that are essential to facilitate cultural co-operation between States, and for our purposes here the principles shall apply.

II THE UNITED NATIONS AND OTHER SPECIALISED AGENCIES CONCERNED WITH INTERNATIONAL CULTURAL CO-OPERATION.

One of the main purposes of the United Nations as reflected in its Charter is

"to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religion" (Article 1 (3));

and for the purpose of achieving these objectives, the Charter empowers the General Assembly to initiate studies and make recommendations aimed at

"promoting international co-operation in the economic, social, cultural, educational and health fields".
(Article 13 (i) (b))

Article 55 states that

"with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations based on respect for equal rights and self determination of peoples, the United Nations shall promote -

- (a) higher standards of living, full employment and conditions of economic and social progress and development.
- (b) solutions of international economic, social, health and related problems; and international cultural and educational co-operation".

Lastly in Article 56

"all members pledge themselves to take joint and separate action in co-operation with the organisation for the achievement of the purposes set forth in Article 55."

As a sequel to Article 56, joint actions by member States have evolved in the establishment of numerous specialised agencies of the United Nations such as UNESCO, WHO, ILO, FAO and others with wide responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields.

UNESCO for example has at present a total membership of 125 countries.⁴ The African States and the Soviet Union are duly represented in this world organisation. There are at present 37 African State members of the UNESCO⁵ - most of them joining as soon as they became independent. The Soviet Union became a member in the spring of 1954.⁶ Although there is no specific means of measuring the efforts of individual member states as such, from the financial aspect the Soviet Union is the second leading contributor to the budget of the UNESCO: the largest contributor being the United States of America.

Whereas the combined 37 African States' contribution to the budget of the UNESCO for 1971-72 was approximately \$2,456,800, the Soviet Union contributed the total sum of \$10,902,330, a per centage of 13.41. The average contribution of each African State is 0.04%.⁷

4. The number quoted is at the time of writing, and excludes 3 Associate members. UNESCO Statistical Yearbook (hereafter referred to as U.S.YB.) 1971, pp. 867-69.

5. Ibid.

6. Laves and Thomson Unesco 1958 p. 333.

7. U.S.YB.(1971) op.cit. pp. 867-69.

As a source of aid to the developing countries of the world, and as an instrument of "cultural diplomacy", fostering understanding of contemporary world relations among the citizens of the world⁸ this organisation fulfils one of the aims and principles of the United Nations Charter of exterminating world poverty and backwardness.

The joint efforts of the member states of the United Nations, especially the rich nations who finance the maintenance of the various projects of such organisation as the UNESCO, are of immense significance to the developing countries, especially the African countries which are the least developed of all.

The analysis below may assist in gauging the importance of this consideration.

Comparative figures expressed in percentages showing the proportion of population which is illiterate after 1960 in the following countries representing various continents are as follows:

AFRICA	-	Mali 97.8%	Sierra Leone 93.3%	Algeria 81.2%
ASIA	-	Nepal 91.2%		
N. AMERICA	-	Guatemala 62.1%		
S. AMERICA	-	Venezuela 36.7%		
EUROPE	-	Bulgaria 9.8%		⁹

8. Walter H.C. Laves - Can UNESCO be of aid in World Crisis?
Foreign Policy Bulletin as in Sathyamurthy. The Politics of
International Co-operation (Geneva, 1964) p.19.

9. U.S.YB. 1970 pp. 31-35

These figures give the countries showing the highest percentage in each continent. According to the current UNESCO Statistics, illiteracy percentage of adult population (15 years and over) in the continents of the world around 1970 are as follows:

Africa - 73.7%, America - 12.7%, Asia (excluding Peoples Republic of China, Democratic Peoples Republic of Korea and Democratic Republic of Vietnam) - 46.8%,
Europe and U.S.S.R. - 3.6%, Oceania - 10.3%.¹⁰

The total stock of scientists, engineers and technicians in the Republic of Ghana in 1966 was 33,030, whereas Isreal in 1969/70 had 73,000 and the United States of America in 1966/67 had 2,093,103.¹¹ Whilst it is true that the population of America is more than that of Ghana, it should be remembered as well that the population of Ghana is 8,600 million¹² and that of Isreal 2,822 million.¹³

In 1967 Liberia - one of the oldest states of Africa - had no graduating student in engineering. There were only 3 in medicine compared with Puerto Rico which had 252 graduating students in engineering and the same number in medicine in 1967.¹⁴

10. U.S.YB. 1971, p.29.

11. U.S.YB. (1970) pp. 534-538

12. Ibid. p.17

13. Ibid p. 19

14. Note that the population of Liberia is 1,150 million and that of Puerto Rico 2,754 million. The latter figure being the de jure Population but including armed forces stationed in that area.

III AGREEMENT ON CULTURAL CO-OPERATION

From the above, it may be seen that the African Continent is the least developed and poorest of all the continents. Joint efforts as requested by the United Nations to liquidate this backwardness have proved positive to a large extent: but they have not been enough; and this brings us to the other aspect of Article 56 of the Charter which calls for separate action on the part of member states.

Separate actions by member States of the United Nations in the fulfilment of the above purposes as in Article 55 have evolved in particular in the contracting of bilateral agreements on various aspects of cultural co-operation.

In the co-operation between the Soviet Union and the African States, agreement on cultural and scientific co-operation forms an important part of the overall co-operation between them. This no doubt is in compliance with the United Nations Charter and the Declaration on Principles of International Cultural Co-operation.

A number of reasons may be given to suggest that there are advantages in cultural co-operation between the two sides. The fast rate of scientific and technical progress in the Soviet Union with its cultural richness can help immensely to raise the poor standard of living of the African States. Although the African States are scientifically and technically poor, their contribution to the world cultural heritage in forms of arts and paintings has been noticeable.

There is no doubt that cultural co-operation has been beneficial to both sides considering the current improvements in the agreements now signed compared with the agreements concluded at the initial stages of the co-operation. Also, that the number of such agreements increases yearly is another testimony to this statement. ||

While it is true that the development of cultural and economic relations between the States depends on the political relations between them,¹⁵ it should be noted that the state of political relations has not wholly determined the extent of cultural co-operation between the U.S.S.R. and the African States.

IV ACTS REGULATING CULTURAL CO-OPERATION

The juridical acts which regulate co-operation between the Soviet Union and the African States vary. The main form they take is that of an Agreement on Cultural and Scientific Co-operation.

15. Mezdunarodno-Pravovie Formi Sotrudnichestva Socialisticheskix gosudarstv. International Legal Forms of Co-operation of the Socialist States. (ed. V.M. Shurshalov) (Moscow, 1962) p.322.

As a rule this form of agreement is inter-state.¹⁶ By 1970 the Soviet Union had contracted agreements of this type with 20 African States.¹⁷ This is the most important form of legal regulation of cultural co-operation between them.

However, there are other methods of regulating this co-operation, for example by protocol, exchange of notes or convention.¹⁸ It should be noted that these other forms carry equal juridical weight and in fact regulate the same objects. As is pointed out below, protocol, exchanges of notes and the like, stem from the main provisions of basic Agreements on cultural and scientific co-operation; and they are regularly used to implement the early schedules which commonly form part of the main Agreements on Cultural Co-operation.

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16. Agreement on Cultural and Scientific Co-operation of 7th September, 1965, between the Soviet Union and Sierra Leone; and similar agreements between the Soviet Union and Togo of 24th July, 1965; Soviet Union and Central African Republic of 15th March, 1965; Soviet Union and Chad Republic of 11th June, 1966 as recorded in Mid Sbornik Deistvuyuchikh dagavorov, soglasheni i konvensii zakluchonikh SSSR C inostranami gosudarstvami. Ministry of Foreign Affairs, Collection of Treaties, Agreements and Conventions in force concluded by the U.S.S.R. with foreign countries. (hereafter referred to as "SDD") Volume XXIV (Moscow 1971) pp. 535-542.
17. Akademia Nauk SSSR. Institut Afriki. Afrika v Mezdunarodnikh otnosheniyakh. Academy of Sciences of the U.S.S.R. Institute of Africa. Africa in International Relations (Moscow, 1970) p.6 This number has substantially risen since then. On 5th March, 1973, an agreement on cultural and scientific co-operation between the Gambia and the U.S.S.R. was signed at a ceremony in Bathurst. The agreement foresaw among other things - exchanges of delegations of writers and journalists, contacts between national libraries, museums and similar institutions and co-operation in the field of broadcasting and television and the distribution and screening of cinema films in each other's country. See Gambia News Bulletin of 8th March, 1973.
18. See U.S.S.R. - Egypt Protocol on the mutual equivalence of the Diplom of Candidat Nauk U.S.S.R. to the U.A.R. Ph.d. degree of 10th December, 1966. S.D.D. (1971) pp. 531, 532.

V. OBJECTS OF CO-OPERATION

The agreements signed between the Soviet Union and the African States regulate different objects which can be divided as follows:

(a) science; (b) education; (c) health; (d) radio and television; (e) arts, sports and tourism. This is not an exhaustive list or a standard division, but it is appropriate for our present purpose.

As indicated earlier, these items could separately constitute objects of agreements on cultural and scientific co-operation or all be embodied in one agreement. No doubt the inclusion of all of these items in one agreement would leave little room for detailed analysis of each item. The main agreement on cultural and scientific co-operation therefore tends to include such stipulations as to the arrangement of special agreements in the future to deal more concretely with the items omitted.

Article V of the Agreement between the U.S.S.R. and the Rwandese Republic of 6th May, 1966, stated:

"The contracting parties intend to arrange, under a special agreement, for the exchange of instructors, scientific workers and experts in the scientific and cultural fields to give lectures or courses and to undertake scientific work in these fields." 19

19. United Nations Treaty Series No. 9039. Agreement on Cultural Scientific Co-operation between the Union of Soviet Socialist Republic and the Rwandese Republic signed at Moscow on 6th May, 1966 (vol. 633, 1968) p. 227.

Such special agreements are seldom contracted on a government level but rather between institutional establishments of both countries such as their National Academies of Sciences.²⁰

However, this type of agreement must not run counter to the general aims and principles of the basic Cultural and Scientific Agreement under which they operate.

VI. AIMS AND PRINCIPLES

The aims and principles of Soviet-African cultural and scientific co-operation are expressed in the agreements establishing such co-operation. Foremost, these agreements depict a general desire to expand cultural and scientific relations, between the contracting parties with a view to the development of better relations, and better understanding.²¹ From the above, both sides attach great significance to cultural and scientific co-operation as a means of developing better, friendly relations and understanding which is an important factor in international co-operation.

20. For instance the Vice Chancellor of the University of Lagos, Nigeria and the Director of the Academy of Sciences of the U.S.S.R. (Institute of Africa) signed an agreement in 1971 on exchange of personnel.

21. See Soviet-Rwandese Agreement, UN Treaty Series vol. 633 p. 226; also Soviet-Chad Agreement S.D.D. (1971) op. cit. p. 541.

In fact in the absence of some over-arching treaty commitment such as a Treaty of Friendship, in Soviet treaty practice with the African countries an agreement on cultural and scientific co-operation, which affords opportunities for the meeting of minds and peoples between the Soviet Union and those of the African States, in the exchange of cultures and knowledge, is a good substitute.

Agreements on cultural and scientific co-operation in Soviet-African practice are established on such principles of international law as are stipulated in the United Nations Declaration on Principles of Friendly Co-operation namely respect for sovereignty, equality, non-interference in each others internal affairs and self-determination. ||

Furthermore, the execution of the provisions of such agreements must be in accordance with the constitution and within the limits of the legislation in force in the respective states' parties. ²²

The legal implication of the above provisions allows for free and equal co-operation devoid of domination or interference by either party. This is more significant to the African States which look up to the powerful and highly developed Soviet Union for genuine aid and

22. See Soviet-Sierra Leone Agreement of 7th September, 1965; Soviet-Togolese Agreement of 24th July, 1965; S.D.D. (1971) op.cit. pp. 535-537; also Article 1 of the Soviet-Rwandese Agreement UN Treaty Series vol. 633 p. 226.

co-operation without strings attached. Indeed, the African countries are very sensitive (especially in their relations with the larger nations) to attempt to violate the principles of international law on which they rely for the maintenance of their sovereignty.

In a strong note of protest in November, 1969, addressed by the Senegalese Government to the Soviet Government representative in Dakar, the Senegalese Government alleged that the Soviet press and radio services were conducting a slanderous and denigratory campaign against Senegal. In reprisal, the Senegalese Government cancelled a radio programme about the Soviet Union, suspended the distribution/publication of a Soviet Cultural Review, and threatened to expel Russian newsmen from Senegal.²³

The above example shows what damage violation of the acknowledged principles of international law can do to good relations between States.

23. Africa Research Bulletin (Political, Social and Cultural) hereafter referred to as ARB(PSC) vol.6, 15th December, 1969; also New York Times 30th November, 1969. The Ivory Coast broke off diplomatic relations with the Soviet Union because of an alleged commentary distributed under the imprint of the Soviet news agency NOVOSTI. See Chapter one of this work especially under the principle of non-intervention.

In Article II of the U.S.S.R.-Rwanda Agreement it was stated that each contracting party shall encourage as far as lies within its power and in accordance with its needs and on a mutually acceptable basis, the development of co-operation, the exchange of experience and achievements in science, higher education, general education, vocational-technical training, health, literature, art, cinema, radio, television, the press, sport and tourism.²⁴ These are the main aims of cultural co-operation between the U.S.S.R. and African States.

In particular, in this Article, the principle of equality was again stressed, but in its juridical and political meanings. As stated earlier, acceptance by both parties that agreement on scientific and cultural co-operation is based on equality is a formal declaration and implies only juridical equality. As may be seen from Article II, each party, recognising the unequal capability of the other,

"shall encourage, as far as lies within its power and in accordance with its needs, and on a mutually acceptable basis, the development of co-operation, the exchange of experience and achievements in science, higher education... sports and tourism."

24. UN Treaty Series vol. 633, p.226.

The contention here is that in terms of scientific and cultural might, the Soviet Union as a world power, indeed has more to give²⁵ in its co-operation than the African countries which, as noted at the beginning of this chapter, are backward and poor. But the notion of juridical equality follows in the same Article II in the formula -

"and on a mutually acceptable basis."

VII. LEGAL CONTENTS AND IMPORTANCE OF EXCHANGE OF EXPERIENCE AND ACHIEVEMENTS.

The legal importance of Article II whereby both sides decided to develop co-operation in the exchange of experience and achievements in the listed items, is that such co-operation stimulates the spread of the highly developed experience and achievements of the Soviet Union to the weaker and poor African States.

The African States require the benefit of these experiences and achievements for their political, economic and social stability - qualities which are essential to the attributes of sovereignty of any nation. Moreover, provisions of the U.S.S.R.-Rwanda Agreement such as those in Article II cited above, are in conformity with the UN General Assembly Resolutions on the co-ordination of the results of scientific research,²⁶ and also with the Economic and Social

25. This in fact is the view of the United Nations that the more developed nations should transfer their knowledge and expertise to the less developed countries.

26. UN GA Resolution 1260 (XIII) 14th December, 1958.
UN GA Resolution 1429 (XIV) 5th December, 1959.

Council resolutions on measures for promoting the international exchange of scientific and technical experience and on the economic development of underdeveloped countries.²⁷

The Resolution of the General Assembly of 5th December, 1959, for instance

"having recognised the importance of the promotion of mutual exchange of scientific and technical experience for economic development especially in the less developed countries which are in great need of assistance, recommends the Governments of member states to encourage the further exchange of scientific and technical experience among countries."

It then called upon the economically and technically most advanced countries to help and support the less developed countries in acquiring scientific and technical knowledge that would make possible an accelerated development and an increase in living standards.

Exchange of experience and achievements in the cultural and scientific agreements between the U.S.S.R. and the African countries is therefore strictly in compliance with the rules and demands of international law.

27. Economic and Social Council Resolution 727^A (XXVIII) 27th July, 1959.
Economic and Social Council Resolution 740c (XXVIII) 31st July, 1959.

VIII. SOVIET CLAIMS

However, Soviet sources claim that exchange as a form of co-operation is out-dated in agreements on scientific and technical co-operation between the Socialist States. This point of view was expressed by a Soviet scholar, A.I. Poltorak, in his article on "The Legal Forms of Cultural and Scientific Co-operation among the Socialist States".²⁸ He contended that exchange as a form of cultural co-operation characterised the initial agreements which the Socialist States concluded between themselves,²⁹ and that in this regard those agreements were similar to agreements between the capitalist states which were also basically limited to types of exchange.³⁰

This is not a view which commends itself with any conviction to the present writer. According to Poltarok, as a result of wider and deeper contacts between the socialist states, exchange as a form of cultural co-operation became out-dated and was replaced by closer co-operation, co-ordination and joint efforts.³¹ In fact he attempted a new definition of socialist scientific and cultural co-operation by quoting the U.S.S.R.-Bulgarian Agreement on Scientific Co-operation of 27th November, 1958. Article 1 of this

28. Mezhdunarodno-Pravovie Formi Sotrudnichestva Socialisticheskikh gosudarstv. International Legal Forms of Co-Operation of the Socialist States (Moscow, 1962) op.cit. pp. 317-390.

29. Ibid p.335 The Socialist Cultural Agreement practice started in 1947.

30. Ibid. p.335

31. Ibid.

Agreement in what may be regarded as a definition, declared:

"The Academy of Sciences of the U.S.S.R., and the Bulgarian Academy of Sciences will carry out scientific co-operation which implies co-ordinating researches on important problems, carry out joint scientific work on topics of mutual interests, and afford one another necessary scientific aid." ³²

Such a definition, he claimed, confirms that socialist scientific co-operation has entered a new stage - from scientific exchange to co-ordinated and co-operative scientific efforts as one of the means of International division of labour.³³ Realising the ambiguity of these claims Poltorak was compelled to retract as may be gathered from a later observation:-

"Even then, exchange as a form of Cultural Co-operation between the Socialist States differs from the exchange as applied between the Capitalist States...Scientific exchange if contracted in good faith can contribute to the development of science." ³⁴

This belated admission can be attributed to the fact that by 1962, when Poltorak made these claims, exchange as a form was very common in the agreements on cultural and scientific co-operation between the Socialist States.³⁵ Article I of the U.S.S.R. - Czechoslovakia Agreement on Cultural and Scientific Co-operation of 23rd April, 1966 ³⁶ reads:

32. Ibid 341

33. Ibid.

34. Ibid. p.341.

35. See Polish-Rumanian Agreement of 27th February, 1948, which was still in force at the time of Poltorak's Article.

36. S.D.D. pp.542-547

"The contracting sides will by all means effect further development of co-operation and exchange of experience in the fields of education, science, literature and arts, film, press, radio, television and also health, physical culture and sports."

Article 3 states that the contracting states will help to promote the achievement of a wide programme of co-operation and exchange of experiences in the fields of social welfare....

Indeed, contrary to claims that exchange as a form of cultural co-operation is out-dated, the above agreement confirms the fact that it still remains an effective instrument of co-operation. It is also improper to describe co-ordinated and joint research efforts as impracticable between the Capitalist and the Socialist States.³⁷ Recent events³⁸ have confirmed that research and knowledge have no political boundaries.

37. Poltorak, Ibid. pp. 341-342

38. During the visit in May 1972 of the American President to the U.S.S.R. both sides signed valuable agreements on joint co-operation in various fields. Thus the Soviet-U.S. Agreement on co-operation in medical research and public health of 23rd May, 1972, provides for joint efforts to combat the most widespread and serious diseases, such as cardio-vascular diseases and cancer. Soviet News 31st May, 1972.

IX. SCIENTIFIC CO-OPERATION

Joint Scientific research is possible between states of opposed ideologies once they are developed enough to undertake such research.

As reflected in some agreements, the practice of joint scientific research is being introduced in the cultural and scientific co-operation of the U.S.S.R. with the African States. The U.S.S.R.-Morocco Agreement on Scientific and Technical Co-operation of 27th October, 1966 stated in Article 2 :

"The co-operation envisaged in this agreement may, in particular take the following forms"-

Provisions 1 and 2 dealt with forms of exchange.

- 3 Joint research work on scientific and technical problems whose results might later have industrial, agricultural and other applications.
- 4 Joint elaboration of certain technological processes in industry, agriculture and other fields. ³⁹

An agreement for the establishment of a space photography centre was concluded in Fort Lamy on 12th January, 1971, between the Soviet Union and the Chad Republic. The agreement covers the systematic photography of artificial satellites and other space objects with a view to solving various scientific problems, and will remain in force for five years. ⁴⁰

39. UN Treaty Series vol. 608 pp. 204-205.

40. ARB(EFT) vol.7, NO.12. January 31st, 1971. p.1913c.

This practice is a welcome departure from the initial dogmatic views held in Soviet circles with regard to the impracticability of co-ordinated research efforts between states of differing ideological views. In Soviet-African cultural and scientific co-operation, joint research work is limited, and exchange has therefore been the most productive form of action. The major impediment to the development of joint research is due to the lack of qualified African personnel.

Moreover, in the view of the present writer, the immediate needs of the majority of the African countries have yet to reach the stage which demands elaborate research. Efforts are being made by these countries to achieve the basic knowledge necessary for their development. Scientific and cultural research work is therefore conducted only on a limited scale, as relevant and necessary for economic and social development.

An example of joint scientific research between the Soviet Union and the African countries is the U.S.S.R.-Somali Republic Agreement of March, 1971, on the construction of a Medical Research Centre in the Somali Republic. According to the agreement, the Research Centre will have laboratories for analysing human and animal diseases. The Soviet Government will provide experts and supply equipment while the Somali Republic provides specialists in these diseases.⁴¹ Similarly,

41. A.R.B. (P.S.C.) Vol.8 No.3. 15th April, 1971, p.2057A.

the Soviet-Guinea Governments signed an agreement on 30th August, 1971, by which the U.S.S.R. was to establish a microbiology laboratory in Kindia which will form part of the Institute of Research and Biology. The two parties also agreed to co-operate in the study of methods of diagnosing and curing infectious diseases to which both humans and animals are subject, and in the training of Guinean Scientists in microbiology.⁴²

In such joint research ventures, the Somali and Guinea scientists will be able, through co-operation with Soviet experts, to expand their knowledge of those aspects of human as well as animal diseases which might eventually prove beneficial to the Somali and Guinea Republics and their citizens. In a similar way, the Soviet experts will be able to expand their knowledge of the tropical diseases of Africa on the basis of original research and not simply in reliance on information gathered at second-hand, as before the recent expansion by the Soviet Union of legal contacts with the African countries.

Between the scientifically advanced countries of the world, responsibilities for the organisation of scientific research and co-operation are shouldered by the equivalents of their National Academy of Sciences. These institutions are composed of Academicians, Professors and specialists who have contributed to the development

42. ARB(EFT) Vol.8, No.8, September, 30th, 1971, p.2139c.

of science. But most African states do not have institutions of this kind and even African Universities - the highest institutions of learning and research - are staffed mainly with foreign professors and specialists.

In 1968, Botswana had a total of 13 scientists and engineers engaged in research and experimental development,⁴³ the Chad Republic in 1969 had 19 scientists and engineers in research.⁴⁴ In contrast, the Soviet Union in 1968 had 1,055,670⁴⁵ and in 1969 1,026,805⁴⁶ engineers and scientists engaged in research and experimental development. Therefore, until the former countries can produce qualified specialists in certain fields, this aspect of co-operation can not be developed further. While it is true that countries such as Egypt, Nigeria, and Ghana do have a certain number of specialists, it must be emphasised that the proportion of research is relatively small, and in fact there are certain important fields where specialists are not available at all.

In view of this inability of the African States to produce enough specialists to be engaged in research work, of great significance is the contribution of the Soviet Government towards realisation of this end.

43. US.YB. (1970) p.578.

44. Ibid.

45. Ibid. p.581

46. Ibid.

Under an agreement signed between the Soviet Union and the Ethiopian Government on 3rd May, 1972, the Soviet Union agreed to finance the construction and equipment of a phytopathological laboratory near the Ethiopian town of Ambo. The Soviet Government also agreed to supply all the laboratory's need of equipment and technicians for the next five years. The 60 hectare site was provided by the Ethiopian Government.⁴⁷

President Ngouabi of the Congo People's Republic on 21st April, 1973, in Brazaville, laid the foundation stone at the construction site of a veterinary laboratory - the first scientific research livestock rearing centre in that republic. The laboratory is to be built by the Soviet Union as a gift to the Congo. Soviet scientific workers will give practical assistance in the development of animal husbandry and in training personnel. The laboratory, which will grow into a Central African veterinary medical research centre at an estimated cost of £1.2m., will study infectious tropical diseases of animals and their treatment.⁴⁸

Also in May 1973, the Soviet Government presented the Central African Republic with scientific equipment worth 155m CFA Francs, for the Bokassa University. It consists of four chemistry laboratories, five physic laboratories, four biology laboratories, classrooms for astronomy and mathematics and other equipment.⁴⁹

47. Ethiopian Herald, 4th May, 1972,

48. A.R.B.(E.F.T.) vol.10 No.4, May 31st, 1973.

49. A.R.B.(E.F.T.) vol.10 No.4, May 15th, 1973.

X. EDUCATION

In the field of education, Soviet-African co-operation has achieved a considerable growth. Perhaps above all else, the desire for education is one of the strongest motives behind the Africans' willingness to co-operate with most developed nations of the world. Virtually all agreements on scientific and cultural co-operation lay great emphasis on education. Article 3 of the Rwanda-Soviet Agreement of 6th May, 1966⁵⁰ stated that the Contracting Parties agree to provide mutual assistance in the training of national supervisory personnel for industry, agriculture, science and culture by granting training facilities in higher and secondary specialised institutions and by in-service training. Further, in Article 4, the Contracting Parties agreed to organise student exchanges and, to this end, each Contracting Party shall 'as far as lies within its power, provide a specified number of places and scholarships for nationals sent by the other party at educational establishments or scientific centres in its own country for training and retraining'.⁵¹

50. UN Treaty Series vol.633, 1968 p.226

51. For similar provisions, see: S.S.S.R. i Strani Afriki. U.S.S.R. and the African Countries (1946-1962) (Moscow 1963) Articles II and III of the Soviet-Guinea Cultural Agreement of 26th November, 1959 p.503; Articles IV and V of the Soviet-Ghana Agreement of 25th August, 1960. *ibid.* pp.614-615. S.D.D. (1971) Article VI U.S.S.R.-Sierra Leone Agreement.

The importance of the development of education in the world, and in Africa in particular, has been stated in various international declarations and resolutions. The UNESCO 1966 Declaration of the principles of international cultural co-operation states in its Article IV (1), that the aim of international co-operation in its various forms, bilateral, or multi-lateral, regional or universal, shall be:

"to spread knowledge, to stimulate talent and to enrich cultures".⁵²

Similarly, on the importance of the development of education in Africa, one needs only to recall General Assembly resolutions such as Resolution 1717 (XVI) of 19th December, 1961, on the development of education in Africa, Resolution 45 (IV) of the Economic Commission for Africa of 28th February, 1962, and Resolution 905 (XXXIV) of the Economic and Social Council of 2nd August, 1962. The General Assembly resolution of 19th December, 1961, in particular invited states members of the United Nations and members of specialised agencies to contribute financial and technical assistance to the African countries in aid of African educational development.⁵³

Provisions in agreements by which the Soviet Union awards scholarships to nationals of the African countries are in accordance with the United Nations' demands and contribute to the gradual decline in illiteracy in some of these countries. In addition, such scholarships serve to prepare cadres of specialists in a variety of forms of development.

52. UNESCO Conference Records 14th Session (1966) 16th Plenary Meeting, 4th November, 1966.

53. UN General Assembly O/R Annexe 16th Session vol.1 item 22.

As pointed out earlier, in Soviet-African treaty practice, the contracting states initially sign a general cultural and scientific agreement enumerating various fields in which both parties intend to co-operate, and these always include agreement to co-operate in educational matters, as above in the U.S.S.R.-Rwanda Agreement noted above.

But the realisation of these provisions takes the form of yearly schedules outlined specifically in a protocol, or programme. Thus, a programme for cultural and scientific co-operation between the U.S.S.R. and Algeria in 1967-68, dated 13th April, 1967, stipulated that the U.S.S.R. was to send to Algeria 330 professors and lecturers to teach at Algerian oil and gas institutes and colleges.⁵⁴ Although Tunisia and the Soviet Union had had cultural and scientific relations since 1963, on 27th May, 1969 both states signed a programme for cultural exchanges valid for 1969-70.⁵⁵ Similarly, the Central African Republic has had a cultural and scientific Agreement with the Soviet Union since 1965⁵⁶ but during the visit of the President of the Central African Republic to the U.S.S.R. in 1970, a protocol on cultural co-operation in 1970-71 was signed as well as a protocol on the mutual validity and equivalence of specialist diplomas and scientific degrees of the two countries and a protocol on training Central African Republic personnel in Soviet educational establishments.⁵⁷

54. African Research Bulletin (Political, Social and Cultural Series) vol.4 No.4 May 15th, 1967. p.769c.

55. L'Action (Tunis) as in supra note 54 above vol.6 No.5 15th June, 1969 p.1425A

56. S.D.D. (1971) p.539 Agreement on Cultural Co-operation of 15th March, 1965.

57. Soviet News 14th July, 1970.

Although agreements on cultural and scientific co-operation naturally state as a matter of course that the parties shall afford each other, so far as lies within their power, scholarships in educational establishments, it should be noted that the main burden of this provision is often carried by the Soviet Union. The African countries therefore enjoy greater advantages as far as this provision is concerned; but because of their backwardness they often want more scholarships than were originally agreed.

At the request of Algeria, more Algerians were enabled to study in the U.S.S.R. in 1970-71 than had been initially agreed. In fact, as against 90 students provided for under the programme of cultural co-operation between the two countries, a total of 225 Algerian nationals had eventually to be accommodated.⁵⁸

The immense contribution of the Soviet-African cultural agreements in the field of education had helped to raise the educational standards of some of these countries. For instance, in the Somali Republic, in 1970 the Soviet Union was providing more scholarships to Somali students than any other country. Of the 1,528 Somali students abroad at the beginning of 1970, 491 were in the Soviet Union, 285 in Italy and 76 in the U.S.A.⁵⁹

58. Soviet News, 17th March, 1970. In 1972/73 Academic Session, 250 Algerians were enrolled in the U.S.S.R. Higher Educational establishments. A total of 650 Algeria students are now in various Soviet educational institutions. See African Research Bulletin (P.S. & C.) vol.9, No.9, 15th October 1972, p.2617A.

59. New York Times 6th September, 1970.

In certain cases, agreements on cultural and scientific co-operation in the field of education have involved the Soviet Union in direct educational projects in the African countries.

These mainly take the form of the Soviet Union undertaking to provide financial assistance in the construction of universities or other educational institutions in certain African countries.

In 1967, the Government of Tunisia started the construction of a university with a large contribution from the Soviet Union. The university is expected to accommodate 15,000 students. Apart from this, a huge contribution was made by the Soviet Union to the building of the Tunisian National Technical Institute which is to have 700 students.⁶⁰ In the Central African Republic/Soviet Union protocol on cultural co-operation for the year 1970-71, the Soviet side agreed to supply, free of charge, equipment for the university that is being built in Bangui.

The Soviet Union undertakes also to supply the African countries with lecturers and specialists in various aspects of education.

These two methods of effecting direct educational projects in Africa provide for every available chance of contributing to the development of education both outside and inside Africa.

60. As shown in the earlier statistics on p.305, the African continent has the highest rate of illiterate population, and measures as stated in the U.S.S.R.-African States Agreements help to decrease this high rate.

Sometimes university establishments in the states concerned sign agreements between themselves on staff and student exchanges. For example, an agreement signed in Algiers between a delegation from the Moscow State University and the Vice-Chancellor of the Algiers University in March, 1970, provided for mutual exchanges of professors, lecturers and scientists to give lectures and conduct seminars.⁶¹

Such inter-university agreements are presumably part of the exercise to implement those aspects of cultural and scientific agreements on co-operation in the field of education.

These types of agreement do not constitute inter-state agreements and therefore cannot be registered as treaties. But the Cultural Agreement between the U.S.S.R. and Ethiopia of 18th July, 1967⁶² which stated that the U.S.S.R. was to provide an adviser and lecturers for a polytechnic institute is an interstate agreement and can be registered at the United Nations.

61. Soviet News, 17th March, 1970.

62. A.R.B. (P.S. & C.) vol.4, No.7, August, 1967 p.830B

XI. LEGAL SIGNIFICANCE OF MUTUAL RECOGNITION AND EQUIVALENCE OF DEGREES

The legal significance of provisions of mutual recognition and equivalence of degrees in Soviet-African treaty practice was not realised until 1966.

Such a provision was conspicuously absent from the agreements concluded before 1966 and it may be assumed that this was in conformity with the maxim 'Modus et conventio vincunt legem'.⁶³ Some explanation of the situation is necessary before proceeding further.

A few years ago, - and indeed, at present in some African countries - degrees awarded in the Soviet Union were not recognised by African Governments. Two explanations may be suggested. The first may be framed in terms of ideological strategies. As a result of colonial indoctrination⁶⁴ most African countries developed a natural dislike for communism as a system - and may still be said to be somewhat wary of communists.

They therefore suspect its education and its ideas. Some of the African Governments feel that Soviet scholarships might have future political repercussions - mainly, production of revolutionaries who might eventually topple their governments.

63. See Soviet-Guinea Cultural Agreement of 26th November, 1959. S.S.S.R. i Strani Afriki, op.cit. p.503, Soviet-Ghana Cultural Agreement of 29th August, 1960. *ibid* p.580.

64. In the colonial era, each colonial power impressed its own superiority to other powers on the colonies. For instance, the British Colonies regarded and still regard 'Made in Britain' as the only ideal. As a matter of fact, Nigeria, a former British colony, some years after its independence was still suspicious of most American degrees.

It is no doubt true that Soviet political interests represent one of the basic motives behind the scholarship awards to the developing countries. Scholarship awards, like trade, are seen as instruments which may be used for penetrating African countries. As might be expected, Soviet scholars deny this and affirm that their aid in the form of scholarships to the developing world differs from the aid given by the Western countries whose basic aim, they claim, is to train the specialists from the poor nations as the upholders of the capitalist interests of the donor countries.⁶⁵ But, in the view of the writer, experience has shown that African students trained in the Western world tend to be stronger advocates of socialist systems of development in their countries than those trained in the Communist bloc. And vice versa African students trained in the communist bloc are not as "revolutionary" as assumed.

XII. SOVIET ILLEGAL PRACTICES

The second is commonly framed in terms of practices of doubtful legality on the part of the Soviet Union. Realising the unwillingness of the African Governments to send their nationals to the Communist bloc, the Soviet Government decided to penetrate these African countries illegally. The Soviet Government made use of the Trade Unions and other pro-Soviet organisations to recruit African students to the Soviet Union to study. Most of these students escaped from their countries without national passports and other proper documents in order to study in the Soviet Union.

65. Mezhdunarodno-Pravovie Formi Sotrudnichestva Socialisticheskix gosudarstv. International Legal forms of co-operation of the Socialist States op.cit. pp.372-373.

In certain cases where official agreements exist between the Soviet Union and the African countries concerned, stipulating the number of students permitted to study in the Soviet institutions, the Soviet Government still ignores the legitimate expectations of the African Governments, based on their agreements with the Soviet Union, and secretly recruits more students from the Trade Unions and societies which sometimes are anti-government.

In an attempt to deter this practice, the African states often publish the official number and the names of those awarded scholarships, and at the same time inform their embassies. The latter scrutinise the lists and report any irregular admissions. The African embassies have had occasion to protest to the Ministry of Education in Moscow in respect of behaviour of this kind.

At present, as a result of the improved relationship between the Soviet Union and these African countries, the Soviet Government has almost stopped these illegal dealings. ||

All the modern agreements on cultural and scientific co-operation provide for mutual recognition of national degrees. Article IV of the Rwanda-Soviet Agreement stated that each of the two parties shall recognise certificates of completion of higher or secondary specialised studies and university degrees awarded by the other.⁶⁶ In most cases, such recognition features in a provision of the general agreement on

66. UN Treaty Series vol.633, 1968, p.227.

cultural and scientific co-operation between the Soviet Union and the particular African country,⁶⁷ but obligations as to mutual recognition policies could as well be constituted by separate agreements. The term commonly used for this type of agreement is a Protocol. Thus, the Protocol on the Mutual Validity and Equivalence of the Diploma of the 'Candidat Nauk' of the U.S.S.R. to the 'Doctor of Philosophy' of the United Arab Republic of 11th December, 1966, stated that in accordance with Article 7 (1) of the Agreement on Cultural Co-operation of 19th October, 1957 on the schedule of cultural and scientific exchange in 1967-68, and with the aim of further development of cultural and scientific exchange in 1967-68, and the development of cultural and scientific relations between the two countries, it was agreed that the diploma of Candidat Nauk of the U.S.S.R. was equivalent to the Doctor of Philosophy of U.A.R.⁶⁸

This provision is of juridical importance. In the early years of agreements on cultural and scientific co-operation between the Soviet Union and the African States, the provision of the mutual equivalence and validity of specialist diplomas and scientific degrees was conspicuously absent, presumably on the assumption that mere agreement on cultural and scientific co-operation which allows for the training of African students ipso facto constituted recognition of each others' degrees.

67. See U.S.S.R.-C.A.R. Agreement of 15th March, 1965, Article IV S.D.D. (1971) p. 539; U.S.S.R.-Chad Agreement of 11th June, 1966, Article 4, *ibid* p.541; U.S.S.R.-Togo Agreement of 24th July, 1965, Article V *ibid* p.538.

68. S.D.D. (1971) 531-532

Although Ghana and the U.S.S.R. had signed a cultural agreement in 1960 and Soviet trained Ghanaians were fully recognised as holding appropriate equivalent degrees by the Ghanaian Government, with the overthrow of Dr. Kwane Nkrumah in 1966, the new Ghanaian Government not only stopped Soviet Government scholarship awards, but was reluctant to recognise Soviet degrees.

This incident would have contravened the international law of treaties if there had been an appropriate provision (such as exists now in most agreements) in the 1960 Ghana-U.S.S.R. Agreement. This legal omission may be seen in the U.A.R.-U.S.S.R. 1957 Agreement⁶⁹ which was rectified only in December, 1966 after the Ghana incident. |

Mutual recognition of degrees of higher institutions of learning between Ghana and U.S.S.R. was included in the Agreement on Cultural co-operation of July 1970.⁷⁰ Most African countries now recognise Soviet degrees, and Africans trained in the Soviet Union now occupy important posts in the various establishments of the African countries. In Nigeria for example, the Federal Public Service Commission sends its recruiting team to the Soviet Union yearly to employ graduating students. Thus, the Chairman of the Commission announced, according to the "West Africa" of 12th May, 1972, that a batch of 30 doctors trained in Russia were expected in Nigeria to begin a one year period of housemanship, which he stated had become compulsory for all medical students trained outside Nigeria. Another important aspect

69. S.D.D. (1971) p.531

70. Soviet News, 4th August, 1970.

of the agreements between the U.S.S.R. and the African States concerning higher education is that, in awarding scholarships to African students, the Soviet Union finances their journeys from their respective countries to the various Soviet institutions. The Soviet Government is also responsible for the maintenance of the African students by monthly stipends, and supplies of clothing and accommodation.

This is significant in Soviet-African practice, because even in co-operation of this nature with other socialist countries, the Soviet Government has undertaken only limited obligations. In fact, in the first agreements between the U.S.S.R. and the other socialist countries as early as 1952, the sending states (socialist states sending their students to the U.S.S.R.) were responsible for financing their students, and for refunding, in addition, 50% of the expenses for education received (professors' and Lecturers' salaries) to the Soviet Government.⁷¹

Agreements after 1960 between the socialist states have changed slightly from the 1952 practice. The sending state pays its students the maintenance allowance and is also responsible for finances connected with his transport to and from the receiving state, while the receiving state bears the entire expenses of the education of the student.⁷²

71. International Legal forms of Co-operation of the Socialist States (Moscow 1962) op.cit. p.366.

72. *ibid.*

This type of aid to the African States contributes to the possibilities of more students being afforded the opportunity of higher education, because the financial deficiencies of most of the African States are such that the governments cannot afford to give free scholarships to their nationals.

By 1968-69, there were 69,819 full-time overseas students in Britain. Of these 3,105 came from Nigeria, 1,414 from Ghana and 1,127 from Tanzania. The majority of the total of 69,819 students were supported either by their families or local communities.⁷³ 90% of African families cannot afford higher education for their children in their own countries, and this figure rises substantially if the education has to be provided outside their countries.

XIII. HEALTH AND SOCIAL WELFARE

In Soviet-African Treaty practice, cultural and scientific co-operation agreements constitute the main legal source for co-operation in the field of health between the states concerned. There is not a single agreement on cultural and scientific co-operation which does not embody a provision on co-operation in the field of health. Article 2 of the U.S.S.R.-Sierra Leone Agreement of 7th September, 1965, stated, for example, that each party shall encourage, as far as lies within its power and in accordance with its needs, and on a mutually acceptable basis, the development of co-operation in health.⁷⁴ Analogous provisions and clauses were included in

73. The British Council Overseas Students in Britain (London, 1969) p.21

74. S.D.D. (1971) p.535

Article 2 of the C.A.R.-U.S.S.R. Agreement of 15th March, 1965⁷⁵
and Article 2 of the U.S.S.R.-Chad Agreement of 11th June, 1966.⁷⁶

The U.S.S.R.-Sierra Leone Agreement went a step further, and in Article 10 the two states agreed to exchange health personnel in order to exchange experiences and familiarise the individuals concerned with the health services in each other's country.⁷⁷

On the basis of the general agreement on cultural and scientific co-operation (with special reference to the three articles mentioned above), interested States often contract separate agreements on health or medical co-operation. Thus, an agreement for medical co-operation was signed on 20th February, 1967, between representatives of the Soviet Union and the Republic of Mali.⁷⁸

The agreement stated among other things that 100 nationals of Mali a year would be treated in Soviet hospitals and medical institutions.⁷⁹ The essence of this concrete form of agreement is that it fulfills practically the general provisions of the Agreement on Cultural and Scientific Co-operation, and secondly that it regulates a wider area of health problems than the general agreement on Cultural and Scientific Co-operation does.

75. S.D.D. (1971) p.539

76. *Ibid* p.541: Also see Article 2 of the U.S.S.R.-Rwanda Agreement of 6th May, 1966 - UN Treaty Series vol.633, 1968 p.226.

77. S.D.D. (1971) p.536.

78. A.R.B. (P.S.C.) vol.4, No.3, 15th April, 1967, p.748A

79. *Ibid*.

Co-operation in the field of health between the African States and the Soviet Union is of vital importance to the African countries. Again, important statistics may be cited to support this claim. As may be seen in Fig.1, there is a greater need for an increase in the number of health personnel in Africa than anywhere else. The consequences of the situation in Upper Volta which has the highest rate of population per physician are seen in the high rate of disease and mortality.

In 1967, Tanzania (with a population of 11,502m. in 1965 and 12,926m. in 1969)⁸⁰ had a ratio of one doctor to 23,000 people.⁸¹ There were just over 300 in private practice and mission work, and 120 doctors in government service.⁸² The Tanzanian Government in fact could only hope that by 1977, there would be 550 government doctors with the number in private practice about the same figure. This will mean approximately 1,000 doctors to a population of 10 million.⁸³

As a result of the lack of preventive medicine techniques and personnel, the African continent suffers from the high incidence of disease suggested by Fig.3. But the high rate of diseases and mortality is worsened by the lack of personnel. The achievement of a normal standard of health in Africa is a prerequisite to the success of other aspects of development such as economic, trade and political.

80. UNESCO Statistical Year Book, 1970, p.17.

81. A.R.B.(P.S. & C.) vol.4, No.3, 15th April, 1967, p.748AB.

82. Ibid.

83. Ibid; In 1965, Tanzania had a total number of 34 graduating students all in Law Faculties. U.S. YB., (1970) p.394.

Only a population which is basically sound in mind and body has the capacity to build an economically and politically vigorous society. In this consideration lies the essential importance of the co-operation of the African States in the field of health with the developed nations of the world.

With regard to this aspect, one of the most important legal forms of co-operation is achieved under the clause which provides for the mutual organisation of student exchanges and the provision of a specified number of places at each others' higher institutions of learning. As pointed out earlier, though this clause often stipulates mutual assistance in the training of personnel and students, the Soviet Union often undertakes the main obligations in the training scheme. The African States make use of this clause to train personnel for their health services. The pursuit of medical studies often accounts for more students enjoying a variety of awards than any other discipline (followed by engineering). This is accounted for by the fact that most African States suffer a serious lack of qualified personnel in these fields.

As exemplified in Article 10 of the U.S.S.R.-Sierra Leone Agreement above, both sides often agree to exchange personnel in the medical field. The 1967-68 programme for cultural and scientific co-operation between Algeria and the Soviet Union of April, 13th, 1967, made provision for over 300 Soviet medical staff for the Algerian hospitals.⁸⁴ In 1967, following the Soviet-Mali Agreement of 20th February, 1967, for medical co-operation⁸⁵ a total of

84. A.R.B. (P.S. & C.) vol.4, 15th May, 1967, p.769C

85. Ibid. vol.4, No.3, 15th April, 1967, p.748A.

27 doctors from the Soviet Union was sent to Mali between February and June of that year.⁸⁶ This figure is significant to the health service of the Mali Republic when it is recalled that in 1969 Mali had a total of 80 physicians - a ratio of one doctor to 61,000 people.⁸⁷ The ratio would have been higher but for the medical agreement of 1967. The significance of this type of Agreement could be seen in the fact that according to World Health Organisation statistics, in 1971, Mali had a total of 124 physicians - a ratio of one physician to 41,000 Malians. This undoubtedly was a substantial improvement in the health services of the Mali Republic.⁸⁸

In accordance with an agreement between the Chad Republic and the Soviet Union at the end of October, 1970, the Soviet Government was to send eleven doctors to the Chad Republic by 1971 to join the eight already working there thus bringing the total number of Soviet doctors in the Chad Republic to 19.⁸⁹ The total number of physicians in the Chad in 1970 was 58⁹⁰ - a ratio of one physician to 64,000 people. This alarming figure confirms the position of the Chad Republic as one of the countries anywhere in the world suffering the largest shortage of doctors. From this viewpoint again, it is easy to appreciate the importance of the agreement between the Soviet Union and the African State of Chad, on medical co-operation. At present,

86. Ibid. vol.4 No.5, 15th June, 1967, p.789A.

87. See Figure 1.

88. W.H.S.R. vol.26, No.3, 1973, p.136.

89. A.R.B.(P.S. & C.) vol.7, No.10, 15th November, 1970. p.1912C.

90. See Figure 1.

FIGURE 1.HEALTH PERSONNEL OF SELECTED COUNTRIES¹

<u>COUNTRY</u>	<u>TOTAL PHYSICIANS</u>	<u>POPULATION PER PHYSICIAN</u>	<u>YEAR</u>
(Africa)			
Burundi	59	61,000	1970
Chad	58	64,000	1970
Mali	80	61,000	1969
Rwanda	62	60,000	1970
Upper Volta	58	93,000	1970
(America)			
Haiti	361	13,000	1969
Dominica	11	6,360	1969 & 70
St. Vincent	16	6,060	1970
(Asia)			
Laos	179	17,000	1970
East Malasia	70	14,000	1970
(Europe)			
Gibraltar	19	1,580	1970
Portugal	8156	1,180	1970
Yugoslavia	20,369	1,010	1970
U.S.S.R.	577,249	420	1970

1. World Health Statistical Report vol.25, No.3, 1972. pp.168-177

students from the Chad Republic through agreement on cultural co-operation are training to be doctors in various parts of the Soviet Union. Again, the agreement on medical co-operation between the Chad and the Soviet Union has contributed to the development of the health system of Chad. In 1971, the number of physicians in the Chad had risen to 63, thus reducing the population per physician ratio from 64,000 to 60,000.⁹¹

The importance of the Soviet-African co-operation in the field of health, especially in the training of cadres for their health service, finds its legal expression in the World Health Assembly Resolution of 20th May, 1971.⁹² The resolution confirmed once again the conclusions reached at the twenty-first, twenty-second and twenty-third sessions of the W.H.A., that extreme shortage of health personnel is one of the major obstacles to the development of effective health services in many countries of the world, and reaffirming that the training of national health personnel can have decisive effects on the promotion and protection of the health of the population, continued:

" (1) Considers that, despite the existing difficulties, the problems of training the necessary health personnel, particularly from the developing countries, can and should be solved within a considerable shorter span of time than has been the case in the developing countries.

91. W.H.S.R. vol. 26, No.3, 1973, p.136.

92. W.H.A. 25th Session, 15th Plenary meeting Resol. W.H.A. 24.59, 20th May, 1971.

(2) Believes a necessary condition for attaining this goal to be the greatest possible co-operation and co-ordination of efforts of all member states and of the relevant international organisations, on a bilateral, multilateral, regional and world-wide basis, for the purpose of securing the most effective utilisation in the interests of the developing countries of all the existing means and resources and of the accumulated experience of training national health personnel of different levels and categories." ⁹³

Paragraph 2 of the resolution, called for every form of co-operation including bilateral. It may therefore safely be reiterated that Soviet-African co-operation in the field of health services is in full accordance with the rules of this important international organisation. Whereas it has been observed ⁹⁴ that the African States have the most acute shortage of health personnel (and indeed, concomitant high incidence of disease) it may also be confirmed ⁹⁵ that there are extreme shortages of hospital establishments to cater for patients. In the majority of cases there are no infectious diseases hospitals, mental hospitals and other specialist hospitals.

Although most of the African countries have high birth rates, there are insufficient maternity hospitals. In this light, therefore, the provisions in certain agreements between the Soviet Union and the African States for the construction of hospital establishments may be considered equally vital to the well being of the African States.

93. For similar resolutions, see W.H.A. 25.17 of 19th May, 1972; W.H.A. 25.42 of 25th May, 1972.

94. See Figures 1 and 3.

95. See Figure 2.

FIGURE 2HOSPITAL ESTABLISHMENTS OF SELECTED COUNTRIES IN 1970¹

	<u>BORUNDI</u>		<u>UPPER VOLTA</u>		<u>U.S.S.R.</u> ²
	<u>Number of Hospitals</u>	<u>Number of Beds</u>	<u>Number of Hospitals</u>	<u>Number of Beds</u>	
General Hospitals	1	650	2	1281	
T.B. & Chest	1	240	-	-	
Infectious diseases	-	-	-	-	
Maternity	10	504	120	959	
Paediatrics	-	-	-	-	
Mental	-	-	-	-	
Others	1	58	-	-	
Local or Rural Hospitals	18	1827	4	672	
Medical Centres with beds	121	1221	22	307	
TOTAL	152	4500	148	3219	
Population per Bed	800		1670		

1. World Health Statistical Report vol.25, No.3, 1972, pp.178-180

2. The concrete data of specific hospital establishments in the Soviet Union was not available at the time of the publication of the above statistical figures, but a total combination of the above hospital establishments in the Soviet Union was 25,369 comprising 2,663,300 beds in 1970. World Health Statistical Report vol.25, No.3, 1972, pp.196-197.

FIGURE 3.COMMUNICABLE DISEASES: NUMBER OF REPORTED CASES AND REGISTERED DEATHS IN 1971 IN AFRICA AND EUROPE.

		<u>CHOLERA</u> ¹	
<u>COUNTRY</u>	<u>CASES</u>		<u>DEATHS</u>
(Africa)			
Chad	8,236		2,411
Mali	4,822		1,308
Nigeria	11,439		3,095
Upper Volta	1,736		489
(Europe)			
Total	96		-

		<u>SMALL POX</u> ²	
<u>COUNTRY</u>	<u>CASES</u>		<u>DEATHS</u>
(Africa)			
Ethiopia	26,329		-
Sudan	1,141		-
(Europe)			
Total	None		-

		<u>YELLOW FEVER</u> ³	
<u>COUNTRY</u>	<u>CASES</u>		<u>DEATHS</u>
(Africa)			
Angola	47		38
Zaire	2		2
(Europe)	No reported cases		

1. W.H.S.R. vol.26, No.4, 1973 p.284

2. Ibid. pp.288-9

3. Ibid. p.290

An example of this form of agreement was the Soviet-Congo
(Brazaville):

"Agreement on the Construction of a Maternity Hospital in the city of Brazaville as a gift from the Soviet Union to the Government and People of the Republic of Congo (Brazaville) of 21st March, 1966." 96

Article 2 of this agreement stated that the construction of the maternity hospital would be undertaken by Soviet building contractors in conjunction with their competent Congolese counterparts on the basis of a building contract between the two parties. With a view to implementing this, Article 3 stated inter alia that the Soviet Organisations would be responsible for the planning work of the construction, deliver necessary materials and equipment for the building and furnish the hospital with the necessary medical equipment and furniture, for which purpose the Soviet organisations would send to the Republic of Congo (Brazaville) a certain number of engineers, technicians and other specialists.

Also, in order to work in the maternity hospital, continued Article 4, the Soviet organisations would send to the Republic of Congo (Brazaville) doctors and other medical personnel to a number and under conditions which would have to be agreed by the parties. Though the agreement described the construction of the hospital as a gift, the recipient country in turn had its own obligations. Article 5 listed these obligations: the Republic of Congo (Brazaville) would supply acres of land free of charge, clear the surroundings

96. S.D.D. (Moscow, 1971) p.549.

and supply local building materials and equipment. Also the Congolese Government through its organisations would be responsible for the transportation of the materials and equipment referred to in Article 3, from the port of disembarkment to the building site. The Government of Congo would also pay the normal salaries of the representatives of the building organisations, the Soviet specialists and their families throughout the construction of the maternity hospital. Accommodations in flats, transport and medical services would be made available to the Soviet builders and specialists.

Finally, the Soviet specialists would be free from any form of tax as well as being permitted duty free importation of articles for their personal use. Clearly, both parties had concrete obligations to fulfil, and failure by either party to adhere to them would definitely have considerable repercussions on the entire agreement. According to Radio Brazaville,⁹⁷ the building of the maternity cost 1.8 million roubles and ten Soviet doctors were expected to run it. It was completed in 1969.

In the early part of 1970, the Soviet Union and the Republic of Sierra-Leone agreed on medical co-operation by which the Soviet Union was to build four hospitals in Sierra-Leone each with 500 beds in Freetown, Makeni, Bo and Kenema.⁹⁸ These are the four major towns in Sierra-Leone.

97. Radio Brazaville of 24th June, 1969, as in - A.R.B. (P.S. & C.) vol.6 No.6, 15th July, 1969, p.1454A.

98. Guardian, 18th February, 1970.

It is of importance here to note that the total number of hospital establishments in Sierra-Leone in 1970 was 36 with one bed to every 1,040 people.⁹⁹ If the four hospitals promised in the agreement are added, a subsequent reduction in the ratio of people to beds is bound to occur. With the addition of 2,000 beds, the total number of beds will be brought to 4,458.¹⁰⁰

Another example of these agreements is the Soviet-C.A.R. In the Cultural co-operation protocol for 1970-71 between the Soviet Union and the Central African Republic of 1970, the Soviet Government promised to build as a gift for the C.A.R., a Centre for Mothers and Infants. At present, the C.A.R. has no such Centre, and such a gift would definitely be valuable to the C.A.R. Government.

XIV. CO-OPERATION IN THE FIELD OF RADIO AND TELEVISION.

No more than a few decades ago, the African continent was virtually cut off from the rest of the world in terms of communications. For example, it took several months for events in London to become known in Freetown or Nairobi. However, with the development of science and technology,

"distances have shrunk, and through radio, television and newspapers, the world has become one large community - albeit divided."¹⁰¹

In 1959, the total number of radio receivers in the world was 358m.

99. W.H.S.R., vol.25 No.3, 1972, p.181.

100. Ibid.

101. Tom Mboya, Technology in the Development of Africa-a Critique; as in Impact of Science on Society vol.xix, No.4, p.331.

and Africa had 4.2m. Ten years later, the world figure rose to 653m. and the figure for Africa increased to 15.6m. ¹⁰²

The importance of mass media in modern relationships between states as a new dimension in human quest for international understanding and co-operation is legally recognised. Article 1a of the UNESCO Constitution states that one of the functions of the organisation is :

" to collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication";

and to that end it recommends the conclusion of:

"such international agreements as may be necessary to promote the free flow of ideas by word and image."

In Article 1(c), appears the undertaking :

"to maintain, increase and diffuse knowledge... by encouraging co-operation among the nations in all branches of intellectual activity and these include inter alia, exchange of publications, objects of artistic and scientific interest and other materials of information."

Furthermore, UNESCO, as the foremost organisation campaigning for the development of mass media, has often stated that the flow of information through international communication can be further speeded through the press, radio, film and television. ¹⁰³

102. U.S. YB., 1970, p.723; The increased figure for Africa represents a doubling of the African proportion of the global figure within the ten year period.

103. Laves and Thomson, UNESCO, (London, 1958) p.117.

The importance of television and radio to African development was recognised as well at the 1962 Paris Meeting of Experts on Development of Information Media in Africa. The meeting noted that:

" these media could be used to bring technical instruction and training as well as general education to the mass of the people on a vast scale and thus associate them closely with the major tasks of economic and social expansion." 104

The meeting noted also that the newly independent states, in their desire to attain within a limited period a level of advancement which had taken the developed nations centuries to attain, were becoming aware of the importance of modern media of communication hitherto unsurpassed in speed, range and force of impact.

Agreement in the fields of television and radio forms a component part of cultural co-operation between the Soviet Union and the African States. As a means of promoting friendly co-operation, television and radio as noted below, have contributed to the development of Soviet-African relations; and as a means of 'diffusing' knowledge, agreement on co-operation in television and radio has played a noticeable role in educating the people of both the Soviet Union and the African States about each other's country.

The legal source of Soviet-African co-operation in mass media is mainly agreements on cultural and scientific co-operation. 105

104. UNESCO. Reports and Papers on Mass Communication. Developing Information Media in Africa, Press, Radio, Film, Television, No.37, (Paris, 1967) p.10.

105. See U.S.S.R.-Guinea Agreement of 26th November, 1959. S.S.S.R. i Strani Afriki op.cit. p.503; also U.S.S.R.-Ghana Agreement of 25th August, 1960, ibid. p.612.

Since the beginning of cultural contacts in Soviet-African relations in the late fifties, co-operation in radio and film has featured prominently though on a limited scale. It may be noted that there was at that time, no co-operation in the field of television, the reason being that television services had not been introduced to most parts of Africa. Article VIII of the U.S.S.R.-Guinea Agreement on cultural co-operation of 26th November, 1959 stated that the contracting states promised to strengthen co-operation in the field of press, film and radio by sending delegations, namely journalists, radio and film personnel, to show national films, organise film festivals. It also provided for mutual exchange of films.

The Soviet-Ghana Agreement of 25th August, 1960 mentioned in Article III that both parties would co-operate in the field of radio-broadcasting and film by the exchange and distribution of radio programmes, musical recordings and showing of films. Both agreements omitted television. However, with the introduction of television to Africa in the early nineteen sixties, agreements on cultural and scientific co-operation began to include co-operation in the field of television. For instance, the first cultural agreement between the Soviet Union and Nigeria of 2nd August, 1967, having stated other fields in which co-operation would be developed, also made allowances for special provisions for the exchange of radio and television programmes.¹⁰⁶

106. In the field of film co-operation, most of the new agreements make no provision. This is explained for by the fact that there are very few African States producing feature films, and the film industry is still underdeveloped.

In the fulfilment of the special provision for the exchange of radio and television programmes, the states concerned often sign separate specific agreements on co-operation in the fields of radio and television. Again, it should be stated that both types of agreement are of equal legal efficacy, the latter being more specific on the major aspects of co-operation.

For present purposes, an appropriate example may be seen in the Agreement on co-operation in the field of Radio and Television between the U.S.S.R. and the Kingdom of Morocco of 27th October, 1966.¹⁰⁷ Article 5 of the Soviet-Morocco Agreement on Cultural co-operation¹⁰⁸ stated that both parties would co-operate in the fields of radio and television. The example (which follows) of a special agreement on co-operation in television and radio constitutes the practical realisation of the above provision. The Agreement on Co-operation in the field of Radio and Television between the Soviet Union and the Kingdom of Morocco of 27th October, 1966, is based on the principles of international law regulating relationship between nations, as expressed in its preamble. The agreement itself is divided into three parts, namely, Radio, Television and General Provisions.

107. U.N.T.S. vol.608, 1967, p.216.

108. S.D.D. (Moscow, 1971) p.530.

Article 1 stated that the Committee for Radio and Television of the Council of Ministers of the U.S.S.R. and the Radio and Television Department of the Kingdom of Morocco shall regularly exchange programmes on social and political questions, sport, literature and science... reports, interviews and other materials of mutual interest. The provisions of Article 1 enable citizens of both countries to have access to knowledge not available to them before.¹⁰⁹ Article 2 called for exchanges of musical works of all kinds recorded on tape. Agreements on cultural co-operation in the Soviet-African practice often provide for exchanges of artists, dancers and singers, but in some cases these groups visit only the large cities. Through the help of radio, a large proportion of the respective populations can enjoy and appreciate each other's music. Since it would be impossible for the majority of listeners to understand programmes broadcast in their language of origin, Article II concluded that

"the musical programmes sent shall be accompanied by explanatory texts where necessary."

In Article 3, it was stated that the parties shall exchange special radio programmes devoted to their National Days, namely, 7th November and 3rd November.

109. See Article 1(3) Declaration on the Principles of International Cultural Co-operation.

XV. TELEVISION

In the field of television, the states concerned agreed to exchange the following:

- (a) Special television programmes devoted to the National Days of the two countries;
- (b) television newsreels and televised reports and programmes reflecting the political, economic and cultural life of the two countries;
- (c) filmed concert programmes;
- (d) televised entertainment, documentaries and popular science films;
- (e) television programmes for children and young people;
- (f) scripts for television films and plays.

Article IV of the Declaration of the Principles of International Cultural Co-operation listed its aims as being to spread knowledge, to stimulate talent and enrich culture, and also to develop peaceful relations and friendship among peoples and bring about a better understanding of each other's way of life. The Soviet-Morocco is a partial fulfilment of this declaration.

The provisions of the Soviet-Morocco Agreement covers major aspects of international co-operation. It therefore brings some benefits to a cross-section of the population of both countries, whether educated or illiterate, young or old. Moreover it answers the call made in the report "On the developing information media in Africa" that in order to spread knowledge and understanding of African regional and international affairs, broadcasting organisations should endeavour to initiate the regular exchange of programmes of an

objective and informative nature. The provisions on the exchange of radio and television programmes as in the U.S.S.R.-Morocco Agreement is therefore one of the recognised legal methods arranging for the transmission of knowledge from one country to another.

The exchange of programmes and the use of television for cultural and educational purposes could be restricted by the imposition of import duties on the items essential for carrying out this exchange. Such a measure is certain to have a greater effect on the poorer nations in the context of bilateral co-operation; and indeed it would contradict the Declaration on Principles of International Cultural Co-operation. Article 7 of the Morocco-Soviet Agreement dealt with this situation. It states that:

"All material obtained under this Agreement shall be used at the discretion of the party receiving it"

and adds:

"The material shall be exchanged and used free of charge."

It however added that the material may be used:

"only in the radio and television programmes of the Contracting Parties and may not be handed over to a third party or used for commercial purposes."

While it is possible to agree with the provision which forbids utilisation of such material exchanged for commercial purposes, the latter part which also forbids the handing over of such material to a third party deserves some comment. It is the present writer's opinion that in as much as material of a cultural and educational nature is intended to promote universal knowledge and education,

provisions on its usage should be sufficiently flexible to allow the realisation of this purpose to the maximum possible extent so long as the principles of international law and cultural co-operation are not violated.

This view is supported by the possibility that at the modern rate of invention, the long process of treaty formulation might hinder the third parties mentioned in the Soviet-Morocco agreement from acquiring the up-to-date knowledge necessary at a particular time for their development. In co-operation between developed and developing nations, the developing nations undoubtedly stand to lose more by this restriction.

Article 7 of the Morocco-Soviet Agreement is in conformity with various international agreements which facilitate the importation by broadcasting organisations of materials of a cultural and scientific nature. For instance, the Unesco agreement on the importation of educational, scientific and cultural materials¹¹⁰ listed in its Article 1, the following material which should be free of custom duties or other charges:

- (i) Films, filmstrips, microfilms and slides, of an educational, scientific or cultural character when imported by organisations;

110. UNESCO Agreement on the importation of Educational, Scientific and Cultural Materials. Annex C-Visual and Auditory Materials of an Educational, Scientific or Cultural Character. (1958)

- (ii) Newsreels (with or without sound tracks) depicting events of current news value at the time of importation;
- (iii) Sound recordings of an educational, scientific or cultural character for use exclusively in public or private educational, scientific or cultural institutions;
- (iv) films, filmstrips, microfilms and sound recordings of an educational, scientific or cultural character.

XVI. PROTECTION OF COPYRIGHT

Article 1 of the Universal Copyright Convention states that:

"Each state undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture." ¹¹¹

The instrument of accession by the Kingdom of Morocco to this Convention of 1952 and its annexed protocols were deposited with the Director General of UNESCO on 8th February, 1972. ¹¹²

111. For detailed analysis of the Universal Copyright Convention see Arpad Bogsch. The Law of Copyright and the Universal Convention (Leyden, 1968)

112. Up to 10th February, 1972, there were 62 countries which have either ratified, accepted or acceded to the U.C.C. Of these, 10 are African States. Some of these acceded to the Convention after independence while others had their membership extended to them before independence by their colonial powers.

The Soviet Union announced that it would join the U.C.C. with effect from 27th May, 1973 - the 64th State to do so.¹¹³ Before this announcement, the question of copyright in the Soviet Union was entrenched in "The Bases of Legislation in respect of Civil Law of the U.S.S.R. and the Federated Republics of 1st May 1962".¹¹⁴ These rules however, have been modified in the current Civil Codes of the Fifteen Federated Republics which were adopted and came into force in 1964 and 1965 respectively.

Though Morocco is covered by the U.C.C. and the Soviet Union by its recent accession is bound to be covered by it as well, it is intended to apply the Convention alongside the provisions of Soviet law guiding copyright in examining stated Article on Copyright protection in the Morocco-Soviet Agreement.

Article 8 of the Morocco-Soviet Agreement on co-operation in the field of radio and television of October, 27th, 1966, stated that:

"The Party sending the material shall be responsible for the protection of copyright in accordance with the law in force in its Territory."

The question of who is/are the author/s of a photograph or a motion picture and other creative works is one of the most controversial problems of copyright law and the replies vary from country to country. Whereas some countries recognise as authors only physical

113. The Guardian, 7th March, 1973.

114. Chapter IV, Articles 96-106.

persons, others recognise other legal entities.¹¹⁵ Apart from Soviet citizens who enjoy automatic copyright as authors, there are two conditions under which copyright may be vested in foreign authors:

- (a) if the work of the author was first published in the U.S.S.R. or located there in manuscript form;
- (b) if the work of the foreign national is protected by virtue of an agreement contracted by the Soviet Union.

The foreign author can only then enjoy copyright protection as stated by the agreement.¹¹⁶ Since joining the Universal Copyright Convention the Soviet Union is bound to apply Article II of that Convention which states:

" 1. Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory.

2. Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals.

3. For the purpose of this Convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State."

Under the principles of the Geneva Convention, the Soviet Union assumed the commitment to ensure for citizens of all the states who are parties to the Convention, the protection of their copyright in accordance with Soviet legislation applying to citizens of the U.S.S.R.

115. Arpad Bogsch, op.cit. p.7.

116. R. Gorelik Copyright in the U.S.S.R. as in Copyright Bulletin vol.III, NO.4, 1969, p.33.

Hence, the Presidium of the U.S.S.R. Supreme Soviet made changes and amendments to the basic principles of civil law of the U.S.S.R. For example, it was proclaimed as law that a work of literature can be translated into another language and published only with the consent of the author or the heirs to the copyright. The time of validity of the copyright after an author's death has been extended to twentyfive years etc.¹¹⁷

Article 8 grants both to Soviet and Moroccan authors copyright protection for the production or reproduction of their works in each other's country. The following may be the subject of copyright protection: oral and written works (literary, scientific, etc.); dramatic works (musical works, with or without words); translations; scenarios; cinematographic or television films; radiophonic or television emissions. The use of the word 'scientific' as a category of the arts has been described as unfortunate on the ground that the scientific character of a work has no relevance from the viewpoint of copyright law.¹¹⁸

When the author of a work is not an individual but an enterprise, the term 'copyright of legal entities' is used. The acceptance of this term varies according to country and the term is fully recognised by Soviet jurisprudence as well. For instance,

"copyright in a cinematographic or television film is vested in the cinematographic enterprise which made the film."¹¹⁹

117. See Soviet News, 25th September, 1973. p.408.

118. Arpad Bogsch, op.cit. p.8.

119. R. Gorelik, loc.cit. p.33.

Legal co-operation between the Soviet Union and African States in the fields of radio and television is not restricted to bilateral co-operation. On the contrary, one bilateral agreement (U.S.S.R.-Morocco Agreement, Article 9) affirmed that the contracting parties:

"shall co-operate in a spirit of mutual understanding in international measures in the field of radio and television in which the two parties are participants or with which they are concerned."

Thus, a certain degree of co-operation between the two countries was expected at the Second Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organisations raised by Transmission via Satellites, in Paris in May, 1972. It should be noted that co-operation would be limited in view of the different legal status of the countries concerned in the Committee. The Soviet Union was not represented as such: instead the Ukrainian Soviet Socialist Republic, one of the 15 republics of the Soviet Union, was present, but only as an observer. Morocco on the other hand had a full delegation led by le Directeur de la Television a la Radiodiffusion-Television Marocaine. However, with the accession of the Soviet Union to the Convention in May, 1973, the situation has changed. It is implied that both parties in the Soviet-Moroccan Agreement will have to amend the necessary provisions of their Agreement on copyright to correlate with the requirements of the U.C.C.

Article 6 of the U.S.S.R.-Morocco Agreement on Cultural co-operation of 27th October, 1966, called for the joint production of films. In the agreement on co-operation in the field of radio and television, no mention was made of this. Presumably the possibility of such a joint venture is still remote in view of the fact that most African States are not only lacking experience in film production, but cannot finance the purchase of equipment for television and radio. They therefore rely on external aid or gifts. At the request of the Congo (Brazaville) Government, a protocol was signed by which the Soviet Government made a free gift of typographic equipment, film equipment and radio apparatus to the Congo (Brazaville) Government.¹²⁰

Finally, it may be observed that agreements which regulate co-operation between the Soviet Union and the African States in the fields of television and radio have been beneficial to both sides, and could be further developed to embrace more aspects of their relationship than it is the situation at present.

XVII. ARTS, SPORT AND TOURISM.

In the general agreement on cultural and scientific co-operation between the Soviet Union and the African States, there are specific provisions which provide for co-operation in each and every item as above.

120. Protocol of 6th January, 1966, on the Free gift of Typographic equipment, Film equipment and Radio apparatus to the Republic of Congo (Brazaville) S.D.D. (Moscow, 1971) p.529.

In Article VII of the Soviet-Rwanda Agreement¹²¹ and in other similar agreements,¹²² it is stated that each contracting party shall encourage its people to become acquainted with the cultural life of the other contracting party, and to this end shall send musical ensembles, theatrical companies and artists, organise concerts, art exhibitions and lectures and collaborate in the sale and purchase of cultural and scientific films. In some agreements, such as the U.S.S.R.-Sierra Leone Cultural Agreement of 7th September, 1965, provision is made for the teaching and study of the language, culture and literature of the countries in their respective schools and scientific centres.¹²³

In the field of sport, the general agreement also contains provisions for co-operation in various forms of sport-exchange of sports organisations, training of sportsmen and sports coaches, organisation of sporting contests and the like. It should be mentioned as well that the Soviet Union has always supported the African States' moves for the exclusion of the racist Government of South Africa's participation in world sporting events. For example, the International Swimming Federation (F.I.N.A.) announced the expulsion of Rhodesia and South Africa from its ranks on 30th August, 1973, for practising racial discrimination. The decision was taken after investigations

121. U.N.T.S. vol.633, 1968, p.227.

122. e.g. Article 4, U.S.S.R.-Morocco Agreement of 1966. S.D.D. (1971) op.cit. p.530.

123. S.D.D. (1971) ibid. p.535.

into swimming organisations in both countries, at the demand of the Soviet Union and East Germany.¹²⁴

Though some of the provisions of agreements between the Soviet Union and the African States provide for co-operation in tourism, it should be noted that there has been little co-operation in this field. Perhaps the most obvious reason for this is the legal control exercised over Soviet citizens travelling outside their country except on official delegations and other limited cases.

However, co-operation in the arts and sport in Soviet-African relations as provided for in various agreements, has helped in accordance with the principle of international cultural co-operation, to develop peaceful relations among the peoples and bring about a better understanding of each other's way of life.

XVIII. JURIDICAL IMPORTANCE OF MIXED COMMISSIONS AND OTHER LOCAL ORGANISATIONS AND AGENCIES.

As noted, agreements on cultural and scientific co-operation in Soviet-African treaty practice regulate a wide area of activities and there are other minor items which have not been discussed in this work. It was pointed out that the implementation of each item provided for in the general agreement is elaborated concretely in a yearly schedule by means of a protocol signed by representatives of both parties. Soviet-African Agreements have two ways of effecting the yearly schedule and implementing its provisions.

124. A.R.B. (P.S. & C.) vol.10, No.8, September, 15th, 1973, p.2971A.

Some of the agreements provide for the creation of Mixed Commissions.¹²⁵ According to Article IV of the U.S.S.R.-Sierra Leone Agreement, of 7th September, 1965, the Mixed Commission shall comprise representatives of both parties and meet not less than once a year on a rotational basis in Moscow and Freetown, to review the general trend of co-operation between them. It is of significance that the Mixed Commission can change the programme for a year within its term of office. The Commission is also solely responsible for the formation of the annual programme.

In other agreements, specific measures provided for in the annual plans for cultural and scientific relations are implemented by direct agreement between the competent institutions and agencies of the two parties.¹²⁶ In actual fact both methods are equally competent from the legal viewpoint, although the Commission is able to implement decisions faster as a standing commission and not ad hoc as is the case with the other method.

XIX. GENERAL PROVISIONS.

Financial questions related to the implementation of agreements on cultural and scientific co-operation between the Soviet Union and the African States are clearly stated in the various agreements,

125. S.D.D. (1971) p.531; *ibid.* p.535.

126. U.N.T.S. vol.633, p.228; S.D.D. (1971) p.540; *ibid.* p.542.

namely that such financial questions

"provided that there is no special agreement"

shall be regulated on a reciprocal basis

"and within the financial capacity of each party."

XX. DURATION

The agreements on cultural and scientific co-operation between the Soviet Union and the African States are always without any fixed time limit, that is, they are envisaged as subsisting for an indefinite period of time. In some cases,¹²⁷ such agreement is subject to ratification in accordance with the domestic legislation of each of the contracting parties and comes into force on the date of the exchange of the instruments of ratification.¹²⁸ In other instances, the agreement enters into force on the date of its signature.

XXI. TERMINATION

Most agreements are considered invalid six months after notification by one party of the termination of the agreement.

127. U.N.T.S. vol.633 loc.cit. p.228.

128. S.D.D. (1971) loc.cit. p.540.

CHAPTER VI.THE ATTITUDES AND CONTRIBUTION OF THE CO-OPERATION OF
THE U.S.S.R. AND AFRICAN STATES ON INTERNATIONAL LAW.1. INTRODUCTION

It seems an easier task to analyse the attitudes and contribution of the Soviet Union or the African States separately on the development of international law than it is to assess their joint contribution on international law. But then, although the States concerned belong to different political, economic and social systems, in their behavioural attitudes towards the international legal order, certain similarities seem to exist, which make possible an assessment of their joint impact on international law.

In his admirable work entitled 'The New States and International Legal Order', Professor Richard Falk posed the question;

"Which States are 'New'?"¹

and in an attempt to answer the question himself, noted rightly that the notion of 'newness' is itself liable to provoke a misleading impression since a number of the states which fall under the classification of 'newness':

"have enjoyed a distinguished record of existence and independence antedating the colonial period."²

Furthermore, Professor Falk enumerated eight classifications which he suggested as attributes shared by 'the new states'. For the purpose of this work it is essential to list the classifications since the countries we are treating tend to share a fair number of these attributes.

1. The New States and International Legal Order. Hague Recueil, 1966, vol.II., p.10.

2. Ibid.

The eight classifications are:-

- (1) The States mainly located in Asia and Africa, that have attained full national sovereignty since the end of World War II.
- (2) The States that are at a fairly early stage of economic development (relatively unmodernised) and espouse an ideology committed to domestic modernisation.
- (3) The non-aligned states.
- (4) The states that have expressed dissatisfaction with the status quo in many sectors of international law and have asserted demands for its change.
- (5) The states that exhibit an attitude toward the international system and within international institutions that emphasises the role of international law in promoting the domestic socio-economic development of the poorer countries in general, the states that make demands for the evolution of an international welfare system on a global scale to correspond with the welfare state now operative on a national scale in many developed countries.
- (6) The states that re-affirm, to the extent consistent with (4), the centrality of norms of sovereign equality, territorial jurisdiction, and non-intervention which safeguard the political reality of the formal status of national independence.
- (7) The states that express a commitment to work for the elimination of the vestiges of colonialism and racism and advocate, where necessary, national, regional, and global uses of force to attain this end.
- (8) The states that express a commitment to promote regional groupings for purposes of achieving common objectives, including racial solidarity and the exclusion of great powers from regional affairs.

If properly scrutinised, there are four of these eight characteristics which form joint attributes of the Soviet Union and the African States. Thus in their international relations and behaviour, 4,5,6, and 7, can be equally related to the Soviet Union on one side, and the African States

on the other. Though the Soviet Union - like Liberia and Ethiopia - is not 'new' as such, yet it shares with the African States certain attitudes towards the international legal order. These similarities in certain ways make the assessment of the joint attitudes and contribution of the Soviet Union and the African States not as difficult as it might seem. States which fall under this classification might appropriately be referred to as the Non-traditional States, since they express some changes in the traditional school. However, before the discussion of this point, there is need for some slight digression in order to recollect two relevant historical factors.

II. EFFECT OF THE OCTOBER REVOLUTION ON INTERNATIONAL LEGAL ORDER.

The overthrow of the bourgeois government of Czarist Russia in 1917 and the consequent establishment of the dictatorship of the proletariat³ brought about the first Socialist State in the world. This event led to significant changes by the new government in the status quo of international law as understood and practised by Czarist Russia. The new government needed to correlate the entire phases of its development with the new system and ideology. The first document on foreign policy adopted 8th November, 1917, and known as the 'Decree on Peace', together with subsequent documents, reflected a notable departure from the pre-revolution foreign policy:

"Thus, the basic principles of Soviet Foreign Policy, which may be formulated as the struggle for peaceful co-existence and the observation of the principle of sovereignty, were formulated in the Soviet State's very first international acts."⁴

3. In Russian, "Diktatura Proletariata"

4. International Law. Academy of Sciences of the U.S.S.R. (Moscow, n/d) p.64.

Professor Kozhenikov claimed that the 'Decree on Peace' (which reflected the government's position):

"has exceptionally contributed to the development of international law",⁵

while another Soviet diplomat affirmed that the decree was not only a major national act, but also an instrument which has assumed great international legal importance and produced a marked influence on the development of the major institutions of international law in the last fifty years.⁶

Though we cannot entirely reject the particular importance attached by the Soviets to the 'Decree on Peace', the decree itself should be seen more as a self-preserving unilateral act of a state encircled by unfriendly states, rather than an act determined as an instrument for developing international law. However, the October revolution viewed objectively, cannot be denied as a major event which affected traditional international law.

III. THE NEW AFRICAN STATES AND INTERNATIONAL LEGAL ORDER.

About forty years after the 1917 revolution in Russia, the world witnessed another important 20th century event - the massive decolonisation system and the attainment of political independence

5. Kurs Mezhdunarodnovo Prava. Treatise on International Law. edit. Kozhenikov, (Moscow, 1966) pp. 21-22.

6. Evgany, N. Nasinovsky. The impact of Fifty years of Soviet Theory and Practice on International Law. P.A.S.I.L. 62nd Annual Meeting, 1968, p.190.

by a large number of former colonies. The emergence of these new states mainly from the African continent in the late fifties through to the sixties and their subsequent participation in the international legal order, has produced not a single but a multiple effect on the established rules of international law.⁷

The above historical factors have separately and jointly influenced the traditional development of international law. In one way or the other, they have also influenced each other. Although the Soviet Union came into being over 40 years before most African countries became subjects of international law, its influence on traditional international law was indeed minimal before the emergence of the new states. This view has been expressed by Professor O'Brien who contended that the appearance of communist Russia did not decisively alter the near monopoly of Western thought and institutions in

7. Dr. F. Okoye, International Law and the New African States (London, 1972) p.172. See also J.J.G. Syatauw, Some Newly Established Asian States and the Development of International Law. (The Hague, 1961); T. Hovet, Africa in the United Nations. (London, 1963); D. Kay, The New Nations in the United Nations, 1960-1967 (London, 1970); Hanna Bokor-Szëgo, New States and International Law (Budapest, 1970); T.O. Elias, Africa and the Development of International Law (Leiden, N.Y. 1972)

international law, relations and diplomacy.⁸ During the interwar period, he added, the Soviet Union was treated as an exception to the rule, and not always an important exception.⁹

Soviet concepts of international law attained their current importance only after 1960¹⁰ the year commonly referred to as the year of Africa. This observation should be put into its proper perspective. Since the inception of communist Russia, Soviet scholars have strived to apply Marxist doctrine to traditional international law through earlier exponents such as Pashukanis, Vyshinski, Korovin, Peretersky and a host of others.¹¹ Sovietologists will however agree that the development of international law in the Soviet Union between 1917 and much of the 1950s was riddled with internal discontent and rancour among its exponents. This state of affairs in the Soviet Union was precipitated by the efforts of the Soviet international lawyers to evolve a legal philosophy immutable to the Marxist doctrine.

8. The New Nations in International Law and Diplomacy. ed. O'Brien. (London, 1965) p.3.

9. Ibid.

10. The emergence of Soviet concepts during this period should not be regarded as a coincidence as such, it owes much to the arrival of the new States and indeed the deep foresightedness of Soviet legal philosophers and theorists.

11. See K. Grzybowski Soviet Public International Law. (Leyden, 1970) pp. 4-24; also International Law (Moscow, n/d) op.cit. pp. 75-86.

But then, majority of Soviet scholars of this period were still not highly read about their new Marxist ideology and it definitely needs time to study an ideology before applying it to a particular field. In fact, this lack of ideal knowledge has been as well stated by Soviet scholars. Thus it was accepted:-

"During the first years after the October Revolution the science of international law experienced great difficulties owing to the lack of trained personnel." ¹²

The result of the period was that the Soviet legal writings of that era lacked consistency and general theme. The variations between the several writers:

"are as between a Bach, a Mozart and a Debussy. There is a noticeable difference but there is a constant factor as well." ¹³

The general confusion of the era was typified with criticisms, self-criticisms and bitter exchanges.

In an admission of error after savage criticisms by his colleagues on some of his pronouncements on international law, Professor Eugene Pashukanis explained:

"I consider it necessary that the problem of international law and of our relationship thereto be put for special consideration, since in this case we are concerned with a problem which is highly complicated and the divergence of opinions among us in this field is very great." ¹⁴

12. International Law, *ibid.* p.75.

13. Professor J.N. Hazard Soviet Legal Philosophy. 20th Century Legal Philosophy Series. p.XIX.

14. The Soviet State and the Revolution in Law. as in *supra* note 13 above, p.244.

Further depicting the confusion in Soviet legal circles of the period, he noted that:

"the problem of international law remains without solution" and added, "Does international law exist? Can we regard it as a real fact in the mutual relationships between the Soviet Union and the capitalist encirclement?.....all this is subject to further consideration".¹⁵

In 1937, Professor Pashukanis was publicly denounced and removed from the corpus of Soviet legal science. His works were removed from the archives of Soviet libraries and his successor Professor A.Y. Vyshinskii, labelled him:

"a traitor and provocateur",
accusing him and others of:

"directing their energies to holding back the development of our juridic thought."¹⁶

Later Professor Vyshinskii too died; like his predecessor Pashukanis, he was also denounced for his pronouncements, and his successors proclaimed new policies to serve as the basis for what has been heralded as a new attitude toward the role of the Soviet state, both in relation to its citizens and in relation to the foreign states.¹⁷ The era of Stalin witnessed the dismissal and renunciation of Soviet legal theorists and their removal from positions where they could influence the trend of development.¹⁸ It was not until 1956 that a

15. Ibid. p.246.

16. Ibid. p.304.

17. J.N. Hazard. Pashukanis is No Traitor. (A.J.I.L. 51) p.386.

18. K. Grzybowski, op.cit. p.16.

relaxed atmosphere started to prevail for concrete juristic discussion.¹⁹

As could be noticed therefore, up until 1956, Soviet legal theorists and philosophers had their internal problems to solve which undoubtedly prevented the establishment of standard theories that could be presented or made to influence the traditional international law which was then still enjoying its undisturbed monopoly.

By 1956, however, most African countries had attained self-government in preparation for full independence. Soviet legal philosophers and theorists were also busy preparing a new phase of Soviet legal science. Its legal philosophers and theorists were now well versed in Marxist theories, and an assault on traditional international law was being prepared, with the awareness of the potential force of the new nations. The significance of this logic is that apart from the internal conflict in the Soviet legal circles which weakened any strong Soviet propositions of the period discussed above, the Soviet Union and the new Socialist States constituted a minority force in the United Nations and other world bodies, and whatever views or suggestions they had on the transformation of traditional international law were always defeated.

19. Sovietskoe Gosudarstvo i Pravo. Soviet State and Law. N.6, 1956, pp.3-10; see also Contemporary International Law, ed. Tunkin, (Moscow, 1969) p.210 on rehabilitation of Pashukanis in current Soviet literature.

The Soviet Union and its allies therefore needed the sympathy and support of the new nations in order to influence events directly.

According to Professor Ginsburgs,

"functioning until recently in a predominantly inhospitable environment, the Russian leadership did not have much chance to peddle its views in the diplomatic market place".²⁰

This view finds support in the statement of Mr. Erik Bal of the Belgium Permanent Mission to the United Nations when he declared that:

"special impetus to Soviet initiatives in the legal field was given around 1960 when a substantial number of newly independent states were admitted as members of the United Nations. Since then, the General Assembly has been invited to approve various comprehensive instruments with a view to formulating present day international law".²¹

Finally, it should be stated that Soviet views and concepts on certain problems of international law greatly influence the attitudes of the African countries which see in these views and concepts radical approaches to problems confronting their own economic and political stability. We shall now proceed to examine certain traditional institutions of international law in the context of Soviet-African co-operation.

20. Proceedings of American Society of International Law, 62nd Annual Meeting, 1968, p.202.

21. Ibid. p.212.

IV. RECEPTION OF INTERNATIONAL LAW.

In the preceding chapters, it was noted that legal forms of co-operation between the Soviet Union and the African States had been patterned basically on the various rules and principles of international law and the principles evolved through the United Nations. This in itself confirms their reception of traditional international law. However, it should be stated that this does not imply full acceptance of all the institutions of the traditional system. The attitude of both the Soviet Union and the African States, as reflected in their agreements, coincide to a certain degree as regards the reception of existing international law. Their approach could be described as double edged, reflecting at the same time both acceptance and repudiation of the existing principles and practice of traditional international law.

Thus in their agreements on co-operation they have incorporated as accepted practice such traditional concepts as non-intervention, pacta sunt servanda, sovereign equality and long established rules governing diplomatic practice. As noted in the preceding chapters, especially in the numerous agreements of co-operation cited, the preambles of these instruments often re-state their adherence to these principles. Sometimes, of course, there are divergent views on the application of these principles which are often waived in favour of the generally accepted principles and methods. In short, the two sides accept in some spheres traditional international law. In other instances they repudiate those principles and practices

incompatible with their aspirations.

There have been various views expressed as to the reception of traditional international law by states alien to its formulation.²² Although the Soviet legal system is said to have originated in the Western system (since Soviet ideology is based on Marx and stems, therefore, ultimately from Hegel)²³ yet Soviet law is stated, should it be said, be regarded as a new legal system.²⁴

The position of the new African states on their repudiation of certain institutions of international law had been expected:

"....The newly emerging nations of Asia and Africa quickly found it convenient to adopt a parallel line in their rejection of certain basic principles of international law on the ground that they had not participated in their formulation." 25

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22. J. Verzijl. Western Influence on the Foundation of International Law. International Relations, 1955(1); Professor B.V.A. Roling, International Law in an Expanded World. (Amsterdam, 1960); Professor Roling stated - "It is an established fact that a change is desired in the existing law. Certain sections of international law should be rewritten in terms collectively agreed upon and in formulating these terms the new countries should be able to speak on a level of sovereign equality." p.72; In his own contribution, the late Professor J.L. Kunz referred to "Our international law as a creation of Christian Europe. It has its roots in the Republica Christiana of medieval Europe." He further noted that "Although the reception of international law by non-Occidental nations made Oriental adjustments and interpretations necessary, the problem of the binding value of European Christian international law on states of non-Occidental legal and value systems was not seen in the West." Pluralism of legal and value systems and International Law. (A.J.I.L., 49), (1955) pp.371-372.
23. Ibid. p.373.
24. Ibid.
25. Professor Alwyn V. Freeman. Some aspects of Soviet Influence on International Law. (A.J.I.L., 62) (1968) p.714.

Dispelling any doubt as regards the adherence of the new states to present day international law, Dr. Abi-Saab stated that because the new nations are the weaker members of the international community, they find international law as a shield and protection, and advised of the necessity that international law responds to the realities of the present day world,

"for if it were disassociated from the facts it would not likely be observed." 26

Similar views were expressed by Dr. Okoye who maintained that the Western lawyers' assertions as regards the rebellion of the new states against international law:

"is in part based upon the widely presumed rather than actual reactions of the new Afro-Asian states to the European origin of international law,"

and that the mere Eurocentric origins of international law need not constitute a fatal handicap in contemporary international society as confirmed by the practice of the overwhelming majority of the new states, many of whom are:

"committed by the letter of their constitutions to respect and even to give priority to their obligations under international law." 27

26. George M. Abi-Saab, The Newly Independent States and the Scope of Domestic Jurisdiction. P.A.S.I.L. 99, (1960) p.101.

27. International Law and the New African States. op.cit. p.177.

Certain specific fields in which Soviet-African co-operation has repudiated traditional international law could be found in their treaty relations notably in the rejection of unequal treaties, freedom of trade:-

"The Kremlin is certainly proud of the apparent reception of its version of ius commercii by the emergent nations and preens itself on having penned a major contribution to the international legal repertory....." 28

Their joint co-operation on issues such as colonialism, the installation of military bases and their similar views and practice as regards recourse to any method of judicial adjustment (which, in their view, should be agreed upon by the sides involved in each instance), are just a few of their repudiations of the traditional processes recognised and applied by the world community. On colonialism, as a result of their joint co-operation at the United Nations, numerous resolutions have been passed directed towards eradication of colonialism as a system. This aspect has been treated in chapter III of this work.

It is essential to examine the joint attitudes of the Soviet Union and the African States as regards the sources of international law since their reception of international law is dictated by their conceptions of the origins of this law.

28. George Ginsburgs. op.cit. p.201.

V. SOURCES OF INTERNATIONAL LAW

Both the Soviet Union's and the African States' positions as regards the sources of international law²⁹ have always been related to their general objections to rules formulated without their approval or participation - more so when certain aspects of the basic rules and principles of international law negate their vested interests.

Article 38 of the Statute of the International Court of Justice listed four basic sources of law which the court could apply in its judgements, namely:-

1. International conventions, whether general or particular establishing rules expressly recognised by the contesting states;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognised by civilised nations.
4. Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.³⁰

29. On the sources of international law in general, see Hans Kelsen, Principles of International Law, (New York, 1966) pp. 437-438; Ian Brownlie, Principles of Public International Law, (Oxford, 1966), pp. 1-28; Hersch Lauterpacht, International Law, edit. E. Lauterpacht (Cambridge, 1970) pp. 51-135; International Law, Academy of Sciences of the U.S.S.R. (Moscow, n/d) pp. 12-14; Treatise on International Law in Six Volumes, edit. Chikvadze, (Moscow, 1967) vol.1, pp.167-187; Clive Parry, The Sources and Evidences of International Law (1965); Treatise on International Law, edit. F. Kozhenikov, (Moscow, 1972), pp. 21-27.

30. P.C.I.J. series D. No.1 Statute of the Court, p.20.

The very fact that there are divided opinions among world jurists as regards the sources of law signifies that the formulation in Article 38 of the sources reflected the highest degree of consensus that could be achieved by its authors and this list itself can therefore not be assumed to be an exhaustive account of the sources of international law. Many views have been expressed as to the sources of international law. Thus, Sir Gerald Fitzmaurice claimed for instance that the sources of international law:

"cannot be stated, or cannot fully or certainly be stated",

but that there must be rules of law that have an inherent and necessary validity, in whose absence no system of law at all can exist or be originated.³¹ These are the same rules of necessary validity which Dr. Okoye referred to as ius cogens:

"which cannot be subject to unilateral negation".³²

According to Professor Kelsen, the 'sources' of law is a figurative and highly ambiguous expression.... The ambiguity of the term seems to render the term rather useless.³³

31. Some Problems Regarding the Formal Sources of International Law. Symbolae Verzijl, (The Hague, 1958) p.164.

32. Okoye, op.cit. p.190.

33. Principles of International Law. op.cit. pp.437-8.

Both the Soviet Union and the African States are presumptively bound by the sources in Article 38 (at least the first three sources). Soviet scholars, however, distinguish man made formal sources of international law, resulting from the agreement of states, and a higher law - the scientifically correct laws of social development derived from Marxism-Leninism. The latter, reflected in the material conditions of society, is said to be the substantive basis of law; the former, the juridical forms which correspond to those conditions.³⁴ This explains why while the Socialist state has the power to assume international obligations, it is restricted by the Marxist philosophy that the general course of history is pre-determined; and therefore the source of law in terms of the dialectical interpretation of history is understood as the material conditions of social life, the type of productive relations which are characteristic of that society.³⁵

34. Professor B.A. Ramundo. Peaceful Co-existence International Law in the Building of Communism. (Baltimore, 1967), p.44.

35. Ramundo quoting Kozhenikov, *ibid.*; It was this Marxist analysis that Professor Lisovskii had in mind when he concluded that the sources of law in general and international law in particular could be determined in two ways; in the broad sense, it is determined by the material condition of life in a given society, and in the narrow, special juridical sense, it is determined by those specific external forms which embody norms of related branch of law. Mezhdunarodnoe Pravo. International Law (Moscow, 1970) p.8.

From the above claims that the sources of international law cannot be stated but that certain rules constitute ius cogens (which starts further argument as to whence ius cogens derives its own source) the question arises whether in view of the fact that the list of the sources of international law are not exhaustive, states are justified in reserving to themselves the selective rights as to what are the real sources of international law. Are the selective methods of the Soviet Union and the African States justified in relation to the sources of international law?

Professor O'Connell argued that a state is a state:

"in as much as the term is meaningful to a lawyer, only because of a law that lays down the conditions for and the attitudes of statehood". "In asserting the faculties of statehood" he maintains, "the new state is accepting the structure and the system of Western International Law, and it may not without offending all juristic doctrine, pick and choose the acceptable institutions." ³⁶

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36. D.P. O'Connell. Independence and Problem of State Succession. in The New Nations in International Law and Diplomacy. edit. O'Brien. op.cit. p.12; Similar views have been expressed by Dr. Okoye and Professor Kelsen. Dr. Okoye for instance wrote that "a state may not pick and choose those rules by which it will be bound without destroying the legal basis of the international community of nations and in fact its own claims to nationhood." loc.cit. p.190., and in his own submission, Professor Kelsen stated that "it may be assumed that international law is binding upon a new state, which has not participated in its creation, only if this state has recognised the pre-existing customary international law as binding upon itself." op.cit. p.445.

Dismissing this argument as a combination of

"appeal based on juristic logic with one premised on political expedience",

Professor Richard Falk noted further that Professor O'Connell seems to be saying that a state is not a state at all unless it accepts the validity of international law which, in his views, is far from being so and that:

"while it is true that inconsistent assertions about the binding nature of legal rules or a specific legal rule weaken the persuasiveness of reliance upon a legal argument, in any particular controversy..... it may also be true that the partial repudiation or alteration of the inherited system is of greater benefit to a particular new state than is the maintenance of a legal framework of inherited rights and duties." ³⁷

In the view of the present writer, the general attitudes of the Soviet Union and the African States on sources of international law should not be viewed as creating negative impact on the development of international law, though such attitudes are bound, temporarily, to halt the traditional development of international law. This conclusion seems to be influenced by the now growing feelings even among Western International Lawyers of the need for a general review of the establishments that constitute traditional international law. Thus, Professors McDougal and Lasswell observed that an indispensable step toward a truly comprehensive system of world order is to disabuse all minds of the false myth that universal words imply universal deeds, and further stated that the effective authority of any legal system depends in the long run upon the common underlying interests of the

37. op.cit. supra note 1, p.27.

participants in the system and their recognition of such common interests.³⁸ To argue the opposite would be tantamount to working against accepted and workable international law.

VI. AGREEMENTS

Judging basically from the forms of co-operation we have been examining in the preceding chapters, both the Soviet Union and the African States regard agreements - especially bi-lateral agreements - as their main source of international law. All forms of co-operation are expressed in agreements and no co-operation is regarded as valid unless a form of contract has been entered into. As could be noticed in our earlier discussion on the legal status of joint communique, they have expanded the forms of agreements in common use by making use of joint communique to conclude agreements.

The priority given to agreement as the major source of international law is rooted in various concepts, some of which are the sovereign equality of states, self-determination of states and other principles of co-operation which form attributes of independent states. Furthermore, the consideration that agreement relies on the consent of the contracting parties, and, granted equality of bargaining power, a contracting side is free to make its own terms, explain also why the Soviet Union and the African States give priority to agreement.

38. The Identification and Appraisal of Diverse Systems of Public Order as in Studies in World Public Order. pp. 3-41. (1960)

Professor Tunkin referred to agreement as an evidently expressed consent of States which is essentially important for the norms of international law.³⁹ In similar vein, Dr. Kudriatsev argued that since international law is created by consent during the process of struggle and co-operation between states, it should derive its own sources through the same means by which it was formulated, i.e. by agreement.⁴⁰

As could be noticed, the element of consent seems to be an important aspect in formulating agreements, and indeed modern events in treaty practice have confirmed that consent is an important means by which rules possessed of legal force come into existence. At the present stage of its development, international law cannot be stated as being perfect or fully exploited. However, for the gradual development of international law and the incorporating of new rules and principles into the existing ones, the consent of member states of the world community in the form of an agreement is essential. And such new rules and principles can only be workable if they enjoy the approval of the majority of member states. The practice of the Soviet Union and the African States of incorporating in their agreements the statement that, during their co-operation they shall adhere to certain principles of international law is a confirmation of such principles as being accepted.

39. Teoria Mezhdunarodnovo Prava. Theory of International Law. (Moscow, 1970), p.102.

40. Osnovii Mezhdunarodnovo Prava. Fundamental of International Law. (Moscow, 1970) p.13.

Thus Professor MacGibbon noted that:

"In the absence of a satisfactory compulsory procedure for authoritative judicial ascertainment the legality of such practices may depend upon the measure in which they enjoy the express approval of other states, or, in the course of time their acquiescence." ⁴¹

The function of acquiescence, he suggested might be equated with that of consent. ⁴² As stated earlier, agreements form the most important instrument of co-operation in the Soviet-African co-operation, and in order to achieve this agreement, the parties to it must give their consent as :

"a procedure for enabling the seal of legality to be set upon rules which were formerly in process of development and upon rights which were formerly in process of consolidation." ⁴³

VII. SUCCESSION TO TREATIES.

The adherence of the Soviet Union and the African States to agreement as their main source of international law has effected great pressure on the institution of succession to treaties. From its inception in 1917, the Soviet Government has reserved for itself the right to pick and choose from the treaties it inherited, those to be honoured and those to be repudiated. For instance, while it refused to recognise agreements between imperial Russia and other

41. The Scope of Acquiescence in International Law. B.Y.I.L. XXI, (1953) p.143.

42. Ibid. p.145.

43. Ibid.

governments of Europe (Prussia, Austria, Hungary) on the suppression of revolutionary movements, the exchange of notes between the British and the Soviet Governments confirming the de iure recognition of the Soviet Government stipulated the continuation of the existing treaties and anticipated new agreements to replace those treaties which had lapsed or been repudiated.⁴⁴

The African States' position has been greatly influenced by this Soviet doctrine, though not decisively. At independence, a few African States adopted a selective policy to treaties that would remain in force, while the majority preferred continuity. Most noticeable among the African States which adopted the former were Uganda and Tanganyika,⁴⁵ Mauritius, and the three Southern African States of Botswana, Lesotho and Swaziland adopted an initial reserved attitude towards treaty obligations assumed on their behalf by Britain.

Professor O'Connell listed five possible attitudes toward continuity of treaties by successor states.

- (a) They might deny continuity, or succession, altogether with respect to the treaties of their predecessor (Algeria, Upper Volta and Israel);
- (b) they might, in the absence of a devolution agreement, declare the continued application of such treaties (Congo-Brazzaville, Malagasy Republic, Congo-Leopoldville);

44. Grzybowski, *op.cit.* pp. 92-94.

45. Jonathan Mallamud, Optional Succession to Treaties by Newly Independent States. (A.J.I.L. 63) f/notes 5 and 13, pp.783 and 786. In 1961 for instance, Tanganyika denounced two treaties concluded between the former colonial ruler Britain and Belgium in 1921 and 1951 which granted a right of transit across Tanganyika in respect of persons and goods passing through to the Congo and Ruanda-Urundi, and a lease in perpetuity at a nominal rent for sites on the territory of Tanganyika for the construction of port facilities.

- (c) they might enter into devolution agreements and base positive action upon them (most of the former British colonies);
- (d) they might take a reserved attitude (Tanganyika, Uganda and Zanzibar);
- (e) they might, without any commitment to principle, continue to apply treaties (most of the former French colonies.)⁴⁶

The above five attitudes, reveal in the African States practice a substantial amount of continuity. Commenting on this subject, Professor Ginsburgs noted that:

"the concept that a fundamental alteration in the public ethos of a community gave birth to a distinct jurial personality not bound by the commitments of the predecessor regime, was the earliest and probably the most fascinating Soviet contribution to the craft of international law."

He further contended that the Soviet position was theoretically valid and politically sensible, and regretted that no member of the third world has yet shown the inclination to go beyond registering verbal allegiance to the principle that the bare act of national emancipation left it free to decide which of the older agreements it would honour and which it simply refused to inherit as prejudicial to indigenous interests.⁴⁷

The major problem behind the inability of the African States to differentiate between verbal pronouncements and practicability as illustrated in Professor Ginsburgs' comments is strictly connected with their economic weakness. However, their real position should not be misconstrued with their economic inabilities which restrict

46. D.P. O'Connell, op. cit. p.20.

47. George Ginsburgs, P.A.S.I.L., op.cit. p.199.

their freedom of action. As to treaties which represent burdens inherited from the colonial past and are inconsistent with their national development, they refuse to accept them as creating binding obligations either on a basis of rebus sic stantibus or on the traditional rule of a 'clean slate' in matters of state succession to treaties. According to a commentator they, (the African States) have picked up the 'clean slate' doctrine for rejecting debts, acquired rights, and treaties, except where their interests dictate otherwise.⁴⁸

VIII. UNEQUAL TREATIES.

Another Soviet doctrine concerning treaties which the developing nations have accepted in practice⁴⁹ is that of unequal treaties. The core argument in support of the illegality of unequal treaties is that an international agreement has for its juridical basis, the voluntary agreement of the states. The parties to such agreement, however, cannot contradict the general principles of international law or the legal conscience of the peoples of such

48. John Spencer, The Impact of International Law on Political and Social Processes within the African Context. P.A.S.I.L. 66, No.4, (1972) p.58.

49. Spencer alleged that in their consistent conservative approach to law, the African States have transmuted the principle of equality of States into the doctrines of the unequal treaty and of ius cogens, reflected in Articles 53, 64 and 71 of the Vienna Convention.

state. 50

"Soviet international theory and practice have enhanced the importance of international treaties as the main source of International Law. In the Soviet concept of International Law, unequal treaties are legally worthless." 51

Soviet concepts of international law further consider as inoperative agreements, those which contravene the basic principles of international law, including in this category,

"various agreements of imperialist states concerning aggressive military blocs, military bases, unequal treaties, agreements of economic 'assistance' with harsh conditions imposed by the imperialists upon the developing countries" etc. 52

Furthermore, although Soviet concepts support the proposition that international treaties must be subject to the rule of pacta sunt servanda, this does not extend to treaties which are imposed by force, and which are unequal in character. Such treaties contradict international law and hence cannot enjoy its protection. Their repudiation cannot be considered a violation of the principle that international treaties must be observed. All these basic Soviet concepts, have greatly influenced the African positions.

50. N.M. Minasian, Istochniki Sovremenovo Mezhdunarodnovo Prava. Sources of Contemporary International Law. (Rostov, 1960), as quoted by Durdenevski and Lazarev. S.G.I.P. (Soviet State and Law), (1962) vol.1, pp.125-27.

51. International Law, Academy of Sciences of the U.S.S.R. op.cit. p.83.

52. B. Ganiuskin, Review of A.N. Talalaev. Yuridicheskaya Priroda Mezhdunarodnovo dagavora. The Legal Character of International Agreements. S.G.I.P., vol.7, (1964) p.168.

These concepts have been incorporated into the agreements between the Soviet Union and the African States, and they are the consequences of their rejection of certain aspects of traditional international law and are attributes applicable to any state under similar conditions. If we reflect back to Professor Falk's classification of characteristics which form attributes of 'new states', it will be noted that states which fall under these classifications (what we have referred to as the non-traditional states) have always:

"expressed dissatisfaction with the status quo in many sectors of international law and have asserted demands for its change"

at least to suit their convenient participation in the world community.

IX. CUSTOM.

It has been noted that one way in which the attitude of the African States might be said to accord with that of the Soviet Union is their position regarding so-called customary international law. According to this view,

"Much of the law which became established during the last two centuries (when world relations were built entirely on power) crystallised into principles designed to serve the purposes of the European countries in colonising the less-developed regions of the world, a process of which the latter were allowed no means of participation whatever. Thus in the age of decolonisation and self-determination, to consider customary international law binding is an unacceptable proposition to the African countries." 53

53. P.R.E. Belabô. The Impact of Fifty Years of Soviet Theory and Practice of International Law. A.S.I.L. (P), (1968) op.cit. p.214.

Espressing similar views, Professor G. Tunkin queried why a new state should not reject a customary international law which it is against. He wondered why if recognition of a new customary norms of international law as such is of importance to the formally existing state, a newly emerging state should stand at disadvantage.

"Such was the view of the Soviet Government during its own period, and at the moment that of the newly emerging states from colonial bondage."⁵⁴

While the Soviet Union and the African States recognise custom as a source of international law, they query the contentions of certain authors as regards the binding rules of customary international law on states which did not participate in their formation. This position of the African States and the Soviet Union has not met with favourable appraisal from its opponents.

The latter have stated that states are bound, by the rules of international law which were formed before they became members of the community of states,⁵⁵ and that it would be against juristic etiquette for a state to query the law by virtue of which it enjoys statehood.⁵⁶ With particular reference to the African States, it has even been pointed out that their 'pick and choose' position is inconsistent with the acceptance by them of their state boundaries as now constituted because the latter are but incidents of colonialism.⁵⁷

54. Teoria Mezhdunarodnovo Prava. Theory of International Law (Moscow, 1970) p.146.

55. Professor Hans Kelsen. Principles of International Law. (New York, 1966) pp. 444-446.

56. D.P. O'Connell, op.cit. p.12.

57. P.R.V. Belabo, loc.cit. p.214.

These views deserve some comments. At first, it seems a logical conclusion that new states have no right to query those rules which create them, since custom is a law-creating fact, and in establishing a custom men do not necessarily know that they create by their conduct a rule of law, nor do they necessarily intend to create law, since the rule of law is the effect and not the purpose of their activity.⁵⁸ Thus Professor Kelsen strove to abstract from customary international law the inevitable element of the consent⁵⁹ of states. In his definition of custom, he stated that:

"custom is a usual or habitual course of action, a long established practice of states"⁶⁰

adding that the assumption that the consent of all the states is necessary for the creation of customary international law is a political fiction.⁶¹

"International customary law could be interpreted as created by a consent of the states only if it were possible to prove that the custom which evidences the existence of a norm of international law is constituted by the acts of all the states which are bound by the norm of customary law, or that a norm of customary law is binding upon a state only if this state by its own acts participated in establishing the custom".⁶²

58. Hans Kelsen, op.cit. p.441.

59. For the essence of tacit acceptance, see I.C. MacGibbon, Customary International Law and Acquiescence. B.Y.I.L. XXXIII, (1957), and commentary on his expositions in Contemporary International Law, edit. G. Tunkin, op.cit. p.178.

60. Hans Kelsen, op.cit. p.440.

61. Ibid. p.444.

62. Ibid.

However, in the Asylum case between Peru and Columbia, the International Court of Justice, basing its views on Article 38 of the Statute of the I.C.J., has this to say on the requirements of custom in international law.

"The party which relies on custom...must prove that this custom is established in such a manner that it has become binding on the other party...that the rule invoked...is in accordance with a constant and uniform usage practised by the States in question, and that this usage is the expression of a right appertaining to the State granting asylum and a duty incumbent on the territorial State..." 63

In a similar vein, Professor MacGibbon noted that:

"the extent to which a general uniform practice has been 'accepted as law' may most readily and objectively be gauged by estimating the degree of general consent, or, failing express consent, the degree of general acquiescence which the practice has encountered." 64

Distinguishing between particular and general international law,

Professor Kelsen stated:

"The term general international law designates the norms of international law which are valid for all the states of the world, whereas the term particular international law designates norms of international law valid only for certain states. General international law, is, as a matter of fact, customary law. As treaties are in principle binding only upon the contracting parties, and as there is yet no treaty concluded by or adhered to by all the states of the world, there is only customary, not conventional general international law." 65

63. I.C.J. Rep. (1950) pp. 226,276.

64. Customary International Law and Acquiescence, op.cit. p.119.

65. Hans Kelsen, op.cit. p.288.

According to him, since the new state is presumed to be subjected to the norms of customary international law from its existence, thereby having no opportunity to participate in the establishment of the custom concerned, the norms of the particular custom cannot have been created by a common consent of all the states;

"the custom by which a norm of general international law is created, a norm which is binding upon all states of the international community, is not necessarily a long-established practice of all the states. A long-established practice of a great number of states, including the states which, with respect to their power, their culture, and so on, are of certain importance is sufficient." 66

There is no greater way to measure the rejection of these views as expressed above, than the practical attitudes of the African States and the Soviet Union on one side, and the new nations in general on the other, to certain customary laws which were formulated without their consent. A case in question is the traditional three-mile limit for the width of the territorial sea. Before the emergence of the new nations, the three-mile limit had, (it was argued by some) become a rule of customary international law. But the new states regard the three-mile limit as a disadvantage to them in view of their poor economic and technological development.

66. Ibid. p.445.

At the Geneva Conferences of 1958 and 1960 on the law of the sea, views similar to those of Professor Kelsen were expressed that since the three-mile limit of the territorial sea existed long ago and was recognised as a norm of international law by the majority of states, it is therefore a rule of general international law binding on all states.⁶⁷

The Soviet Union and the new nations rejected this view. Thus the Saudi Arabian delegate to the Conference recalled the statement of an eminent jurist that an established rule of practice was an established rule of law. He then submitted that, what was not a rule of practice, could not be a rule of law.⁶⁸ Similarly, the Soviet delegate observed that the discussions at the conference had shown that there was no rule in international law governing the breadth of territorial sea. According to him, the three-mile limit rule had not been accepted by all governments and consequently was not a rule in international law.⁶⁹

The African States and the Soviet Union have carried this verbal rejection into practical deeds. Thus, the African Conference on Maritime law in Yaounde 1972, affirmed that the African States had the right to fix reasonable limits on their territorial waters, but

67. Mr. Dean (U.S.A.) UN. Conference on the Law of the Sea. O/R., vol.II, p.35, para.6.

68. Mr. Shukari (Saudi Arabia) *ibid.* p.36, para.16.

69. Mr. Tunkin (U.S.S.R.) *ibid.* p.37, para.35.

that these should not exceed 12 miles.⁷⁰ Most African countries have indeed abandoned the traditional three-mile limit rule and accepted the 12 miles,⁷¹ and some have even exceeded the 12 mile limit.⁷²

Apart from the practical rejection of the binding nature of certain rules of customary international law, by the African States and the Soviet Union, many writers have come out in opposition to the acceptance of the compulsorily binding effect of certain norms of international customary law on states who did not participate in the formation of such law, when it negates their interests. And even the concept of the existing rules of international law binding upon newly recognised states independently of their consent, it has been stated,

"does not exclude the propriety of insisting on a consensual basis for the formation of new customary rules. Consent once given with regard to a new custom cannot be revoked at will by individual States, but the development of a customary rule may be interrupted if consent is refused"⁷³

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70. Bulletin of Legal Developments. The British Institute of International and Comparative Law. July, 29th, 1972, No.15, p.170.
71. Under the new Territorial Waters Bill, Kenya extended the limit of her territorial waters from 3 to 12 nautical miles. *ibid.* s/n. 70, November, 20th, 1971. No.22, p.233; Nigeria took the same step on March 8th, 1967. Nigeria Official Gazette (1967) pp.A43-A45.
72. In a recent proclamation signed by President Nyerere of Tanzania, Tanzanian territorial waters has been extended from 12 to 50 nautical miles. The Guardian, 27th August, 1973.
73. Professor I.C. MacGibbon. Customary International Law and Acquiescence. *op.cit.* p.138.

This point holds well with the position of the African States who on the attainment of independence had no option but to accept certain rules of international law, even though these were not fully in their interests. For instance, although the Federation of Nigeria had been independent since 1960, the three-mile limit rule which it did not help to create, and which obviously was to its disadvantage, was accepted and operated for seven years before it was abolished.

According to Professor Tunkin, the newly emerging states have the legal right not to recognise certain customary norms of general international law,⁷⁴ and further stated that the concept as regards the binding nature of recognised customary norms of international law on all other states irrespective of their consent to such recognised norms has no legal basis in contemporary international law and justifies the efforts of certain countries to force on the new states such as the Socialist countries⁷⁵ or the emerging states of Asia and Africa, certain customary norms which, although recognised by certain powers as norms of general international law, are partially or entirely unacceptable to these states.⁷⁶

74. Theory of International Law. op.cit. p.148.

75. The reference to the Socialist States as 'new' conforms with our earlier submission as regards joint characteristics which form attributes of newness of the Socialist and the African States.

76. Theory of International Law, op.cit. p.150.

On the question of the inconsistency of the African States' position with their acceptance of their state boundaries which were formulated by the colonial powers without their consent, Mr. Belabo argued that there is no contradiction here since their attitude is based on practical realism and sound theory:

"For if the African countries be considered newly born babies it would be monstrous to tell them they have been born with shapes and forms so irregular that they should be reborn to correct the defect; or if they be considered dwarfed adults would it be reasonable to require them to enter a process of vegetative fission to improve their forms, or to accept principles which run counter to their very existence as free adults." 77

Finally, it should be stated that their acceptance of the colonial boundaries made by the colonial powers for administrative convenience and not necessarily from the rules and principles of ethnography as such, was an inevitable act, since the African countries would choose not to risk their political independence at the expense of prolonged arguments over boundaries, and the correctness of the rules of traditional international law which they knew they could influence once they become full fledged members of the world body.

77. op.cit. p.214. In Mr. Sanders' words, "The acceptance by the African States of their boundaries has, of course, been inspired by down-to-earth consideration of self-preservation and does not really lend support to the contention that the African States have acquiesced in the traditional rule of state succession in respect of dispositive treaties." A.J.G.M. Sanders reviewing Dr. Okoye's International Law and the New African States in Comparative and International Law Journal of Southern Africa, 5 (1972) p.377.

X. GENERAL PRINCIPLES OF LAW.

Article 38 of the Statute of the I.C.J. directs the court to
 "apply the general principles of law recognised by
 the civilised nations."

This clause itself has been given different interpretations according to various authors. This situation is caused by the ambiguous manner in which the clause is formulated. Thus in the Soviet Union, it is generally assumed that the general principles referred to apply to general principles of international law.⁷⁸

Lord Phillimore interpreted it as:

"maxims of law, or principles accepted by all nations
in foro domestico."⁷⁹

In his commentary on that interpretation, Dr. Clive Parry stated:

"if thus understood, the general principles of law are certainly not law as such and the only question about them is whether they constitute a distinct source of law at all and if so, of what category"⁸⁰

his basic argument being that rules and principles differ. Lord Phillimore's interpretation is very similar to that of Dr. Okoye who noted that the general principles so referred to offer an opportunity for developing international law by analogy with principles common to important systems of national law or by deduction from accepted principles of justice.

78. D.I. Kudriatsev, Osnovii Mezhdunarodnove Prava. Fundamentals of International Law. (Moscow, 1970) p.15.

79. Professor Cheng, General Principles of Law as applied by International Courts and Tribunals (1953) pp.7-18, 24 as in Clive Parry. The Sources and Evidences of International Law. (Manchester, 1965), p.83.

80. Clive Parry, *ibid.* p.84.

The above view of Dr. Okoye and other similar Western interpretation that general principles include domestic legislation is dismissed in typical Soviet polemical style as an attempt to impose the bourgeois system of law upon the socialist states and the new states of Asia and Africa. The Soviet view considers it essential that there be agreement upon these general principles, since it is only through agreement that formal international legal norms are created. This view has the support of the African States who, as pointed out earlier, rely on agreement as the main source of international law.

The views are inexhaustible, and the large number of self-interpretations makes the task of determining the general principles as in Article 38 as a source of law more confusing.

XI. OTHER SOURCES: RESOLUTIONS AND DECLARATION OF THE UN; JOINT COMMUNIQUE.

The Soviet Union and the African countries are not in entire agreement over the concept that General Assembly resolutions and declarations constitute sources of international law. Even among Soviet scholars, there are two schools of thought over the question. Those who have stated that certain UN resolutions and declarations constitute sources of international law include Professors V.N. Durenevskii, C.B. Krilov, E.A. Korovin, N.M. Minasian, G.I. Morozov and others. They relate certain criteria by which these resolutions can become sources of international law such as:

- (a) when states apply norms of such resolutions in their practice with other states, and

- (b) when such resolutions become adopted by unanimous vote.⁸¹

The other school of thought comprising of Professors L.I. Lukin, G.I. Tunkin, D.B. Levin, L.A. Madjorian etc., reject the above assertion and claim that UN resolutions and declarations can only become sources of international law if they confirm or interpret existing international law.⁸²

African scholars⁸³ and a growing number of Western writers⁸⁴ are however in favour of attaching the force of law to General Assembly resolutions since they argue:

- (a) that resolutions and declarations as expressed by the votes of states constitute state practice and are therefore evidence of customary international law;
- (b) that these resolutions represent the collective acts of States, - acts capable of creating customary international law;
- (c) that the Assembly is composed of states, and declarations are not institutional acts only but also the acts of a collectivity of states.⁸⁵

The logic is that if individually states can influence the development of international law, it is easy to understand that collectively they can do likewise.

81. Kurs Mezhdunarodnovo Prava. Treatise on International Law. edit. V.M. Chikvadze. vol.1, (Moscow, 1967) p.191.

82. Ibid. p.192.

83. See O.Y. Asamoah. The Legal Significance of the Declarations of the General Assembly of the United Nations. (The Hague, 1966) T.O. Elias, Africa and the Development of International Law. (1972) op.cit.

84. Jorge Castaneda Legal effects of United Nations Resolutions (New York, 1969); Dr. Rosalyn Higgins. The Development of International Law through the Political Organs of the United Nations. (London, 1963)

85. Asamoah, op.cit. p.241.

While the African States favour total acceptance of UN resolutions and declarations as sources of international law, the Soviet basic position (irrespective of the divided opinions) is not wholly different from those of the African States, since it accords legal force to certain resolutions which tend to favour its policies, and the African States position is so, because of the knowledge that the group can always use its large numbers to influence these resolutions. In the early part of this chapter, it was stated that in the hierarchy of what constitute the sources of international law, Soviet and African scholars attach the greatest significance to agreements. In chapter two of this work, we tried to state certain peculiarities in Soviet-African treaty practice which tend to create the joint communique as a form of agreement. Based on this submission, joint communiqués, when they appear in the form of agreement can constitute source of law as well.

XII. SOME ASPECTS OF THE IMPACT OF SOVIET-AFRICAN CO-OPERATION ON INTERNATIONAL LAW.

In assessing the impact or contribution of a newly established state on the international legal order, there are certain criteria which although do not necessarily form models for assessment, appear to be essential.

- (a) It is necessary to examine how the newly established state reacts to traditional international law.
- (b) It is essential as well to measure the contribution of such state to the creative jurisprudence, with necessary attention paid to the part it plays in the progressive development of international law.

- (c) The elaboration of new legal rules governing the conduct of states in their intercourse.
- (d) the actual practice of the new state as relevant to its contributions.
- (e) Acceptance of the newly propounded doctrines by the old members and the entirety of the members of the world community.

We shall proceed to examine these criteria. Again, at the beginning of this chapter, we have stated the reaction of the Soviet Union and the African States to the reception of traditional international law. To avoid repetition, it will suffice to state here that the double edged approach - acceptance and rejection of traditional international law by these states - could be viewed as being in conformity with the historical development of law which in the opinion of one of the seven dissenting judges in the South West Africa case is a:

"continual process of the cultural enrichment of the legal order by taking into account values and interests which had previously been excluded from the sphere of law." ⁸⁶

Modern trends of development in international affairs are clear indications of the need for international law to develop into an effective and flexible system of control. But if that be the case, traditional international law has to be more accommodating. According to Dr. C.W. Jenks, such development of international law into an effective and flexible system of control, poses considerable difficulties

86. 1966 I.C.J. (South West Africa) p.34.

involving consideration of basic humanitarian and moral concepts and requiring an expansion of the existing corpus of law to embrace the fundamental changes in the political, economic and social structure of the world which have rendered existing precedent insufficient.⁸⁷ It may therefore be stated that the gap created by the 'existing insufficient precedent' is being filled by the approach adopted by the Soviet Union and the African States which admittedly disturbs the normal development of international law, but nonetheless makes it universal.

This no doubt sounds apologetic to the Soviet-African viewpoints since supporters of the maintenance of traditional international law in its entirety might reject the talk of universality of international law when their own concepts are being neglected for those of the new states. And indeed, we might admit that this is really a complicated issue in that, while one section of the world community receives an amount of satisfaction, others do not. The ideal solution should then be a maximum degree of accommodation on all sides, for it is irrational for the new states and those who want a change in the status quo of traditional international law to demand a total change of all its facets, while it is incompatible with the realities of modern development for the old states to refuse certain changes in the old concepts.

87. Law in the World Community. (London, 1967)

As regards to the extent of the contributions of the Soviet and the African States to the creative jurisprudence and the progressive development of international law, it is worth mentioning that both sides have left some imprints. Provisions of their numerous bilateral agreements contain re-statements of traditional principles of international law such as sovereign equality, non-intervention etc. Their joint contribution at the United Nations to the expansion and endorsement of the principle of self-determination as an important rule of modern international law has been expressed in numerous UN resolutions and the formation of several committees engaged in such questions. Some of these principles which were regarded as moral or political tenets have been transformed into legal principles. In this case one might refer to the General Assembly Declaration on Principle of International Law concerning Friendly Relations and Co-operation among States. The principles enumerated in this declaration contained most of the elements of Peaceful Co-existence - a Soviet concept which in turn has been claimed to originate from the Pancha Shila - the five principles which had been initially proclaimed in the Sino-Indian Pact of 1954 and expanded in the Bandung Declaration of Afro-Asian States of 1955. ⁸⁸

Both Soviet jurists and their contemporaries in the African States have participated and participate in the workings of numerous organisations and bodies responsible for the transformation and further

88. See Professor Leon Lipson. Peaceful Co-existence. as in The Soviet Impact on International Law. edit. Hans W. Baade (New York, 1964) p. 28.

development of international law and the laws of diplomacy. One of these very important bodies is the International Law Commission which has been responsible for drafting numerous documents which have thereafter acquired legal force. That the International Law Commission has been successful in producing mutually agreed documents for the further development of international law, is partially due to the positive contribution of the Soviet Union and the African States. Through the work of the International Law Commission, the old international law is gradually being reshaped to conform with our contemporary society and needs. Among its notable achievements are codification of:-

- (a) The Law of the Sea (1958);
- (b) The 1961 and 1963 Vienna Conventions on Diplomatic Relations etc.

Documents of the Commission reveal to what extent the Soviet Union and the African States have jointly contributed to the work of this body.

XIII. PACIFIC SETTLEMENT OF DISPUTES.

One of the areas of international law where the Soviet Union and the African States have made some impact is the settlement of disputes. Although by Article 93 of the United Nations Charter, all members of that organisation are ipso facto parties to the Statute of the International Court of Justice, in their practice, the Soviet Union and the African States prefer pacific settlement of their disputes without referring to the court.

However, it should be pointed out that this practice itself does not imply casting aspersions on the I.C.J. since it has even been pointed out that:

"given the lack of any obligation to submit disputes to the court this minimum formal affiliation is not very significant." 89

Their attitude can be attributed to the traditional secretive ways of the Soviet Union in always wishing to portray its policy as peaceful, or rather peaceloving, and on the African side, the old age African tradition of settling disputes within the family context.

89. Professor R. Falk, op.cit. ibid. p.89. According to Mr. Sanders, the African States prefer diplomatic or political methods of settlement, and do adopt the view that disputes among themselves should be settled in an African cadre rather than by outsiders. Some of them have accepted the compulsory jurisdiction of the I.J.C., and some of their international agreements with other foreign states contain clauses accepting this compulsory jurisdiction of the I.J.C. in disputes that might arise in the application or interpretation of such agreements. Further examples of the recognition on the part of the African States of judicial and quasi judicial methods of settlement are reflected in such international instruments as (a) the Court of Arbitration established under the 1969 Yaounde Convention of the 18 Associate members of the Common Market; (b) the Common Market Tribunal established by the Treaty for East African Co-operation in 1967; and (c) the references contained in the Convention establishing the African Groundnut Council of 1964; the 1966 African and Malagasy Sugar Agreement, and finally the 1963 Treaty on Navigation and Economic Co-operation between the States of the Niger Basin. Of course, these instruments prescribe pacific settlement between the parties as **first step in any dispute that might arise.** A.J.G.M. Sanders, op.cit. pp.378-379.

For instance, the Organisation of African Unity which has just celebrated its tenth anniversary has always demonstrated its power as an agent of reconciliation. It set up powerful machinery for the pacific settlement of disputes by establishing a commission of mediation, conciliation and arbitration whose constitution and powers were defined by a protocol signed in Cairo on July, 21st, 1965. However, it is interesting to note that member states of this organisation have often than not achieved their settlements through 'summitry' rather than through the formal submission of disputes to the OAU Arbitration Commission. This was reflected early in the life of the O.A.U. when it brought an end to the minor war between Algeria and Morocco. In 1973 at the tenth anniversary conference of Heads of States in Addis Ababa, the bringing together of General Idi Amin Dada of Uganda and President Julius Nyerere of Tanzania, at least temporarily, and the acceptance of the establishment of a commission to reconcile Ethiopia and Somalia who were at the verge of war, reflect the pressure that Heads of State can exercise on their fellows. Reconciliation and mediation have no doubt formed an important function of the O.A.U. apart from other longer-term objectives. In some of the agreements between the Soviet Union and the African States, the practice of pacific settlement of disputes arising from their co-operation has been incorporated.

Concerning the elaboration of new legal rules governing the conduct of states in their intercourse, the attitudes of the Soviet Union and the African States on certain concepts of international law

are evidences of the impact which they have had. Some of these concepts, such as self-determination, sovereign equality, succession have been examined, but it is considered worthwhile reviewing in greater detail one of the most important institutions of international law which has a considerable bearing on the existence of any new state or government and which governs the condition of membership in the family of nations. We refer to Recognition in international law.⁹⁰

XIV. RECOGNITION IN INTERNATIONAL LAW.

An important objective law of modern development is the expansion of international economic, political and cultural ties. This objective law of development is the basic factor stimulating co-operation between States since no country, large or small, can live in isolation. Contemporary international relations can be equated to the network of a spider's web with all nations inevitably joining in some form of relations with one another. In this aspect an important role is played by the institution of recognition of states and governments which determines and indeed regulates to a large extent

90. The institution of recognition generates profound interest in the Soviet Union and the African States for historical and other reasons. The Soviet Union after the 1917 revolution had difficulties in getting recognition from the other states. With the emergence of the new states of Africa, some older states have queried the claims of small states to statehood and have been reluctant to grant them spontaneous recognition. For some cases related to recognition after the 1917 revolution in Russia, see *The Gagara Case* (1919); *Luther v. Sagor* (1921); *Lazard Bros. v. Midland Bank Ltd.* (1933).

relations between emerging states and governments, and the old existing ones.⁹¹

Since relations between states flow from the act of recognition itself, it creates the legal basis for subsequent relations between the recognised and the recognising states. Recognition in Soviet literatures has been defined as:

"an act of sovereign states (clearly expressed or tacit) testifying to the emergence of a new sovereign formation or a new government and is aimed at the establishment by the recognising and the recognised states of relations whose nature and volume depend on the modes of recognition and its forms." ⁹²

Another Soviet source defines recognition in international law as:

"a legal act by which one state or a group of states declare the character and scope of their relations with the government of a new state as an international person." ⁹³

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91. On Recognition in International Law, see, Professor Hersch Lauterpacht Recognition in International Law. (Cambridge, 1947); Professor L. Oppenheim International Law a Treatise, vol.1. (London, 1955) pp. 124-125. Manual of Public International Law, ed. Professor Max Sorensen (London, 1968) pp. 268-290; William V. O'Brien and Ulf H. Goebel, U.S. Recognition Policy Toward the New Nations in The New Nations in International Law and Diplomacy, ed. W.V. O'Brien, op.cit. pp. 98-228; Professor J.E.S. Fawcett, General Course on Public International Law, Recueil des Cours. (1971) (1) pp. 427-431; Professor R.Y. Jennings General Course on Public International Law ibid, (1967) (II) pp. 349-368; Professor K. Grzybowski, Soviet Public International Law, op.cit. pp.68-74; Professor L.C. Green International Law through the Cases. (London, 1970) 3rd. edit. pp.119-156; Contemporary International Law, ed. G.I. Tunkin, op.cit. pp. 204-215; International Law, Academy of Sciences of the U.S.S.R. op.cit. pp. 116-125; Kurs Mezhdunarodnovo Prava Treatise on International Law, (Moscow, 1972) pp. 89-93; Hanna Bokor-Szego New States and International Law, (Budapest, 1970), op.cit; T.O. Elias, Africa and the Development of International Law (Leiden, 1972) op.cit.
92. Contemporary International Law. ed. G. Tunkin. op.cit. p.205.
93. International Law. Academy of Sciences of the U.S.S.R. op.cit. p.117.

XV. THE THEORIES OF RECOGNITION.

There are two basic theories of Recognition - the Constitutive and the Declaratory theories.⁹⁴ It has been noted that the controversy between the two is probably not possible of resolution because each point of view contains something of the truth of the matter.⁹⁵ This view can be considered as the third school of thought on the institution of recognition. The exponents of this view regard the distinction between the declaratory and constitutive theories as somewhat artificial

"for all acts of recognition have declaratory and constitutive aspects." ⁹⁶

In the opinion of the present writer, the last approach seems to be more appropriate since the question of recognition is still a topical problem of international law and in weighing both theories, there are elements of support in practice for each.

94. In modern literatures, exponents of the constitutive theory are notably Professors H. Lauterpacht and Hans Kelsen. See Hans Kelsen, Recognition in International Law. A.J.I.L. 35, (1941); while Professor J.L. Kunz, and the majority of Soviet jurists are great exponents of the declaratory theory. The constitutive theory states that without recognition, a state does not exist, since prior to recognition, the community in question is void of rights and obligations which international law associates with statehood. Only recognition constitutes a state as an international person and endows it with rights and obligations. The Declaratory theory rejects the concept that recognition creates new subjects of international law and states that it only records the appearance of a new state since prior to recognition the nascent community exists as a state.

95. Professor R.Y. Jennings. *Recueil des Cours*. (1967) (II) op.cit. p.350.

96. Professor J. Fawcett. *Recueil des Cours*. (1971) (I), op.cit. p.429.

For present purposes we shall not enter into the semantic controversy of the theories, but rather proceed to examine the impact of the co-operation of the Soviet Union and the African States vis-a-vis their practice on the institution of recognition.

XVI. RECOGNITION AND DIPLOMATIC PRACTICE.

It has been established as a fact of history that recognition as an institution operated basically in the sphere of diplomatic relations. According to Professor Koretsky,

"In practice until now, recognition was a matter of diplomatic relations".⁹⁷

Recognition and diplomatic relations are two distinctive institutions although they are often (but mistakenly) equated. The term recognition has been said to comprise two distinct acts - political and legal.⁹⁸ The political act of recognition according to Professor Kelsen means that the recognising state is willing to enter political and other relations with the recognised state or government, and adds that since a state is not obliged to entertain such relations with other states namely to send or receive diplomatic envoys, to conclude treaties etc.,

"political recognition is an act which lies within the arbitrary decision of the recognising state."⁹⁹

97. See. K. Grzybowski, *op.cit.* p.69.

98. Professor H. Kelsen, Recognition in International Law. *op.cit.* p. 605; Mr. Francois, *International Law Commission, 11th Meeting,* (YB. I.L.C. 1949) p.82.

99. Kelsen, *loc.cit.* p.605.

However, according to the Soviet declaratory school,

"In as much as a new state is a full-fledged subject of international law from the moment of its inception, the equal part played by the wills of the recognising and recognised states in the establishment of diplomatic relations rules out the possibility of the recognising state enjoying any advantage." 100

This view rules out the earlier one expressed by Professor Kelsen as to the arbitrariness of decisions to establish diplomatic relations. And indeed, Article 2 of the Vienna Convention on Diplomatic relations states that:

"The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent."

Recognition is further distinguished from diplomatic relations in that the latter can only be established after the former act, although there are instances in international practice when recognition has been granted to a community as a state without the establishment of diplomatic relations or if established, after a long interval. In chapter two of this work under diplomatic relations between the Soviet Union and the African States, it was pointed out that formal establishment of diplomatic relations takes place long after the African States have been recognised by the Soviet Union.

According to Professor Schwarzenberger,

"Even if the existence of a state as an international person is recognised by another state, this does not mean that a state is bound to have dealings with any specific head of a recognised state. If it does so, it maintains diplomatic relations with the state, if not it suspends them." 101

100. Contemporary International Law, ed. G. Tunkin, op.cit. p.214.

101. A manual of International Law, (1952) as in A.J.I.L. 65, (1971) p.555.

In the Soviet Union-Ivory Coast example, although the Soviet Union recognised the Ivory Coast as a sovereign State as soon as it became independent, the establishment of diplomatic relations took place between the two countries only after seven years. A marked distinction between these institutions is apparent also in the fact that even when diplomatic relations are ruptured, recognition holds.¹⁰² Thus in the example just stated above, the rupture of diplomatic relations between the Soviet Union and the Ivory Coast in 1969 did not imply withdrawal of recognition by either state from the other as a sovereign entity.

XVII. THE SOVIET UNION RECOGNITION POLICY TOWARD THE NEW STATES OF AFRICA.

In various discussions over the institution of recognition in international law and particularly in the Western countries, the supporting evidences advanced by various scholars have been drawn from the most abundant sources - diplomatic practice and judicial decisions. This applies to both the constitutive and declaratory proponents. The anomalies of these sources have been pointed out. Professors O'Brien and Goebel warned:

"The legal thinker who begins with a strong doctrinal bias, who is inclined to believe that state practice will support his theories, naturally tends to interpret the sweeping, imprecise language of diplomatic practice to fit his own hypothesis...more precarious however is the established Anglo-American custom of 'proving' recognition theories by quoting from domestic judicial decisions."¹⁰³

102. See comments on this by Professor R.Y. Jennings, *Recueil des Cours*, op.cit. p.355.

103. United States Recognition Policy toward the New Nations. op.cit. p.99.

They further stated:

"The abundance of completely reported case law provides the scholar with a great bulk of primary legal material that is seemingly relevant and highly authoritative. Yet both the relevance and the authority of much of this case law is open to question."

Their submission is that since these courts have no direct role in the conduct of the foreign affairs of their countries - only taking cognisance of the decisions and policies of the executive,

"what they say, therefore about the nature of recognition as an institution in public international law, or about the criteria for recognition or the forms of degrees appropriate to different kinds of recognition, is usually obiter and sometimes rather inexpert and confused." ¹⁰⁴

In examining the recognition policy of the Soviet Union towards the new African States, it is necessary to note that since precedents in court decisions are not recognised in Soviet jurisprudence, judicial decisions either of the Soviet, African or Western courts have no bearing on the recognition policy of the Soviet Union towards these states. This perhaps explains the conspicuous absence of cases related to recognition in Soviet literature.

XVIII. ACCEPTED METHODS OF THE ESTABLISHMENT OF NEW STATES AS SUBJECTS OF INTERNATIONAL LAW.

Soviet legal scholars accept and recognise three distinct methods of establishing new states in international law: ¹⁰⁵

104. Ibid. p.100.

105. International Law, Academy of Sciences of the U.S.S.R. op.cit. p.116; also Kurs Mezhdunarodnovo Prava, (Moscow, 1972) op.cit. p.89.

(a) New States created as a result of social revolutions, leading to the replacement of one social system by another, for instance a capitalist system by a socialist system as in the Soviet Union and Cuba.

(b) formation of new states in the course of national liberation struggles, as when former colonies set up their own independent states as in Kenya and Algeria;

(c) the formation of new states as the result of the merger of two or more states as in Tanganyika and Zanzibar or the breaking up of one formal state into different states as India-Pakistan, Pakistan-Bangla Desh.

According to Soviet jurists and scholars, the first group of states created as a result of social revolution, need no recognition since, in their case, the subject of international law remains unchanged. It is the second group of states that seems most appropriate to our discussion here since the majority of the African States were colonies before becoming independent. However, although Soviet scholars in general terms group the African States under these states formed in the course of national liberation struggles, it cannot be correctly stated that the majority of these states were established as a result of national liberation struggles. Indeed, there are very few cases when African states achieved their independence through national struggle. The most notable cases are Algeria and Guinea Bissau. On the 19th of November, 1973, at the eighth extraordinary session of the O.A.U's Council of Ministers, the Organisation of African Unity admitted a 42nd member in the independent self-proclaimed state of Guinea-Bissau.¹⁰⁶

106. Guardian, November, 20th, 1973.

The admission, which was by acclamation of the existing 41 members, created a precedence in that it was the first time that the organisation has admitted a state before independence has been negotiated with the previous colonial power, since in point of fact, Portuguese troops are still fighting the forces of the P.A.I.G.C.C., the African Party for the Independence of Guinea Bissau and Cape Verde.

Objecting to the consideration of an item,

"Illegal occupation by Portuguese military forces of certain sectors of the Republic of Guinea-Bissau and acts of aggression committed by them against the people of the Republic,"

Mr. Antonio Patricio, the Portuguese representative, stated at the United Nations General Assembly of October, 22nd, 1973, that the fact that a number of non-aligned or Communist countries had rushed to recognise the 'paper republic' of Guinea Bissau could not be used by the Assembly to pronounce on the legitimacy of the presence of Portuguese authorities in that territory, adding that recognition of this 'new paper state' by other states, was an illegal act and condemned by international law.

He further maintained that:

"Premature recognition constitutes an act of intervention"

and that

"The country which prematurely recognises as a new government a liberation movement engaged in armed conflict with the administering power takes part indirectly in that conflict." 107

Despite these objections, the voting on the adoption of the item was 88 in favour, 7 against and 20 abstentions. Voting against were, Portugal, South Africa, Greece, Brazil, the United States, Bolivia and Spain. According to the 'West Africa' issue of January, 7th, 1974,

"The UN General Assembly has decided that the Portuguese delegation in New York represents only metropolitan Portugal and not Angola, Mozambique or Portuguese Guinea. The latter as Guinea-Bissau, the assembly declared, was an independent state."

The UN General Assembly at its session on November, 2nd, 1973, voted overwhelmingly in favour of a resolution welcoming

"the recent accession to independence of Guinea-Bissau"

and the creation of the Guinea-Bissau Republic. The resolution called for the immediate withdrawal of Portuguese forces from Guinea-Bissau and condemned Portugal for its continued

"illegal occupation of certain parts of the Republic of Guinea Bissau."

Voting for the resolution was 93 to 7 with 30 abstentions. Those against were Britain, United States, Portugal, South Africa, Greece, Spain and Brazil. The Soviet Union was one of the 65 co-sponsors of the resolution,¹⁰⁹ and was also one of the first countries to recognise Guinea-Bissau even before most African countries did. At a reception in November, 1973, Mr. Nikolai Podgorny headed a top-level Kremlin welcome for Mr. L. Cabral, the head of government of the new state of Guinea Bissau, who was on a 10 day official visit.^{110.}

109. Ibid. vol.10, No.11, December, 15th, 1973, p.3058A.

110. West Africa, 26th November, 1973. p.1680.

By October, 16th, 1973, 62 countries had recognised Guinea Bissau.¹¹¹ This number has no doubt increased since then.

Soviet policy on the recognition of the African States stems from its stand on the principle of self-determination (at least in its external context) and finds its theory in the declaratory school. According to Soviet scholars, after the adoption of the General Assembly Declaration on the Granting of Independence to Colonial countries and peoples,

"one may speak of a new rule now in process of formation - the right of the newly independent states to international law recognition and the obligation of other states to recognise them."¹¹²

It is claimed also that

"the constitutive theory is an ideological weapon of the old world which seeks by all possible means to retard an irresistible process - the formation of new states on the ruins of colonial empires...Its principles and rules of international law according to which the formation of new states (subjects of international law) does not depend on recognition."¹¹³

Soviet scholars further claim that recognition only creates a legal basis for relations between the recognising and the recognised states, and that acknowledgement of the emergence of a new sovereign state and the intention to establish relations with it find expression in the act of recognition. The weakness of the constitutive theory is stated to be apparent in the fact that non-recognition of a state for instance does not debar it from participating in international intercourse.

111. A.R.B. (P.S. & C.) vol.10, No.10, November, 15th, 1973, p.3018C.

112. Contemporary International Law. edit. G. Tunkin, op.cit. p.209

113. Ibid. p.206; R.L. Bobrov, Two Questions of Theory of Recognition of New States and Governments. S.S.I.P. (Soviet State and Law) No,1, 1958.

This concept is favourably received by the new states. Thus on the question of the Participation in a Treaty at the work of the International Law Commission in 1962, Dr. T.O. Elias submitted a re-draft of the article on this topic. The re-draft was in the following terms:

- "(1) In the case of a general multilateral treaty participation shall be open to every sovereign state.
- (2) In all other cases, participation shall be open to every state;
- (a) which took part in the adoption of the treaty or
- (b) to which the treaty is expressly made open by its terms, or
- (c) which was invited to attend the conference at which the treaty was drawn up, unless a contrary intention appears from the treaty itself." ¹¹⁴

The re-draft was opposed by some delegates ¹¹⁵ on the ground that the proposed draft impinged upon the complex problem of recognition. This was dismissed by delegates from the socialist countries who maintained (as stated by the Soviet Union delegate, Professor G.I. Tunkin) that recognition has nothing to do with participation in a treaty. He remarked further that some of the parties to recent general multilateral treaties did not recognise each other or had strained relations with one another, but yet did not prevent them from participating in the same treaty.

114. Yearbook of International Law Commission, (1962) vol.1, p.248.

115. Mr. Cardieux (Canada), *ibid.*; Mr. Ago (Italy), *ibid.* p.249.

"In modern time, international personality did not depend on recognition"

he concluded.¹¹⁶ Similar views were expressed by Judge Manfred Lachs of Poland.

Agreeing with Professor Tunkin and Judge Lachs, Dr. Elias stated that the argument of recognition was beside the point and that the object of his proposal was to make it clear that the considerations guiding the Commission should not be based on the rules established by the long-established states.¹¹⁷

XIX. CRITERIA FOR RECOGNITION OF A NEW STATE.

An important question that frequently influences the recognition policy of existing states is the determination of the existence of a state or its true emergence as such. The yardsticks for measuring the existence of a state lie in certain criteria. Although the term state has no exact definition,¹¹⁸ the criteria for establishing the existence of a state seem to have received unanimous consensus with only slight differences. In its resolution of April 24th, 1936, the Institut de Droit International laid down these criteria:

"The recognition of a new state is the free act by which one or several states take note of the existence of a human society, politically organised on a fixed territory, independent of any other existing state, capable of observing the prescriptions of international law and thus indicating their intention to consider it a member of the international community."¹¹⁹

116. Ibid.

117. Dr. Elias (Nigeria) *ibid.* p.251.

118. D.A. Ijalaiye Was 'Biafra' at any time a State in International Law? (A.J.I.L., 65) (1971) p.551.

119. As quoted by P.M. Brown Recognition of Isreal (A.J.I.L. 42) (1948)

Article 1 of the Montevideo Convention of 1933 on the Rights and Duties of States, stated:

"The State as a person of international law should possess the following qualifications -
 (a) a permanent population; (b) a defined territory;
 (c) government; and (d) capacity to enter into relations with other States." 120

Soviet jurists maintain in general unspecific terms that the main condition is that the appearance of any new formation claiming to be a subject of international law should not contravene generally recognised principles of international law and particularly the principle of self-determination. This broad formulation no doubt enables the Soviet Union to recognise those new States alone which in its own views appear as subjects of international law without contravening 'generally recognised principles of international law and particularly the principle of self-determination'. In short, new states to be recognised, must have satisfied Soviet concepts of principles of international law.

However, it should be stated that since almost all the African States at independence fulfilled at least the first three criteria often referred to, as in Article 1 of the Montevideo Convention of 1933, there have not been proper occasions to determine the meaning of the broad Soviet term of contravention of 'generally recognised principles of international law.' Also, since the existing states have to grant the nascent states the capacity to enter into relations with other states, Soviet recognition policy seems often to assume that the African States have this capacity.

120. Convention on Rights and Duties of States. December, 26th, 1933, U.N.T.S., 165, (1936) pp.19-25.

XX. TYPES OF RECOGNITION.

In Soviet practice there are two main types of recognition of new states.¹²¹ These are the famous de facto and de iure recognitions. The distinction between the two lie in their legal consequences. Generally, de facto recognition is regarded as a provisional incomplete form of recognition. It is regarded as a transitional stage which either ceases with the disappearance of the object of recognition, or is transformed into de iure recognition. The Soviet Union has often used de facto recognition to recognise mainly national liberation movements which have not attained full political independence rather than new states. This position enables the Soviet Union to retract in case the insurrection fails.

During the Algerian struggle for independence, the Soviet Union initially found itself in a rather confusing situation. At that time, relations between the Soviet Union and France were cordial, and in a speech on October, 31st, 1959, Premier Kruschchev endorsed President De Gaulle's Algerian policy and added:

"it may play an important role in the settlement of the Algerian question." 122

To many African States who had regarded the Soviet Union as staunchly against colonialism, the statement was a disappointment. What made it more embarrassing for the Soviet Union was the fact that the People's Republic of China had recognised the Algerian Provisional Government.

121. Treatise on International Law in Six Volumes, (Moscow, 1967) op.cit. pp. 24-28; Treatise on International Law (Moscow, 1972) op.cit. pp.91-92

122. Christian Science Monitor, 12th March, 1960.

In face of this embarrassment, the Soviet Union recognised the Algerian Provisional Government de facto on 19th March, 1962.¹²³ However, the Soviet Government did not agree to the opening up of its Algerian Mission until after the Algerian referendum confirmed Algeria as a sovereign State. On 14th July, 1962, two Soviet diplomats, Sergei Kaverin and Andrei Zelenin arrived in Algiers to take up a regular post since France ordered the consulate to be closed in 1948. Ambassador A. Abramov joined the staff in October, 1962.¹²⁴

The Algerian example testifies how the Soviet Government utilises de facto recognition as a transitional stage leading to de iure recognition. De iure recognition, which is the very common type of the two in the recognition policy of the Soviet Union towards the African States, is regarded as the full official recognition which confirms the factual establishment of a new subject of international law. According to Soviet practice as might have been seen from the discussion above, there is hardly any distinction between de iure recognition and the establishment of diplomatic relations. Indeed, according to one source,

"The establishment of diplomatic relations always implies evidence of full recognition, - that is recognition de iure." ¹²⁵

123. Treatise on International Law (Moscow, 1972) loc.cit. p.92.

124. New York Herald Tribune, 1st October, 1962.

125. Treatise on International Law, (Moscow, 1972) op.cit. p.91

In conclusion, it should be stated that there have been no problems as such of the new states of Africa being recognised by the Soviet Union. The policy has been constant since the late fifties and has been adequate. The Soviet Government has always been very prompt in announcing recognition of new states in general, an act which can be explained by the fact that the Soviet Union maintains that recognition does not itself create the rights of a state, an argument which touches once again on the declaratory and constitutive theories of recognition.

XXI. THE CONFLICT OF NATIONAL AND INTERNATIONAL LAW AND THE DUTY OF RECOGNITION.

The view has been expressed that the tests of recognition "have yielded to motives and considerations essentially foreign to the purpose of recognition." 126

In our discussion of the recognition policy of the Soviet Union toward the new States of Africa, and the impact of such acts on the development of international law, it should be stressed that the Soviet Union recognition policy has undoubtedly been motivated by self interests in the execution of this duty.

This fact of course applies to every other recognising state, for it is unthinkable to assume that states always allow objective international duties to override their national interests. Here we witness a conflict between national and international law, with the

126. Professor H. Lauterpacht. Recognition in International Law. op.cit. p.32.

former, which is dictated by national policy, taking priority over the latter. This situation is brought about by the fact that the state which takes a decision to recognise a nascent state is not accountable for its acts to any superior jurisdiction, and

"while the task of ascertaining the existence of the conditions of statehood is essentially one of administration of international law, it is at the same time a political act fraught with political consequences involving the interests of the states called upon to grant recognition." 127

There are two important reasons which greatly influence the Soviet Union recognition policy toward the new states of Africa. In order to solidify its position and exert its influence on developments in international affairs and the world community, there is the need to appease and impress the new nations in the hope of receiving their future support on certain issues of interest to the Soviet Union - hence the Soviet Government's instant recognition policy.

Secondly, since Marxism-Leninism regards the elimination of capitalism and colonialism as inevitable tasks, the emergence of new radical states is a vital hope towards the realisation of these ends - since the bulwark of the new states likewise resent capitalism and colonialism.

In conclusion, though Soviet-African co-operation is relatively young, yet their joint impact on the development of contemporary international law, is a threat to traditional international law, and this fact has been so recognised even by the apologetics of the traditional school.

127. Ibid. p.33.

The various forms of co-operation we have examined in the preceding chapters started towards the late fifties, which means that their state practice could hardly have established definite answers to what their attitude on all the major issues of international law is.

However, with the changing trends in world economic situations, co-operation between the poor and developed nations is becoming more and more inevitable. Oil diplomacy has now joined other forms of diplomacies such as gun-boat and ping-pong as means of regulating relations between states. Economists, politicians all over the world are busy expanding their institutions to fit into modern phases in world development, and international law undoubtedly is being looked upon to help fix rules that will make international co-operation possible between states - poor and rich.

B I B L I O G R A P H YBOOKSIN ENGLISH

- Academy of Sciences of the U.S.S.R.,
International Law (Moscow, No Date)
- American Society of International Law,
International Law in the 20th Century (New York, 1969)
- Asamoah, O.Y.
The Legal Significance of the Declarations of the
General Assembly of the United Nations. (The Hague, 1966)
- Baade, H.W.(ed.)
The Soviet Impact on International Law (New York, 1964)
- Bailey, S.D.
The United Nations (London, 1963)
Voting in the Security Council (London, 1969)
Chinese Representation in the Security Council and the
General Assembly of the United Nations (Sussex, 1970)
- Barras, J.
Aland Islands Question: Its Settlement by the League
of Nations. (Yale, 1968)
- Berliner, J.S.
Soviet Economic Aid (London, 1960, abridged)
- Bogsch, A.
The Law of Copyright and the Universal Convention
(Leyden, 1969)
- Bokor-Szego, H.
New States and International Law (Budapest, 1970)
- Brownlie, I.
Principles of Public International Law (Oxford, 1966)
- Castanenda, J.
Legal Effects of United Nations Resolutions (Columbia, 1969)
- Cheng, B.,
General Principles of Law, as Applied by International
Courts and Tribunals (London, 1953)
- Creig, D.W.,
International Law (London, 1970)

- Elias, T.O.
Africa and the Development of International Law
(Leiden, 1972)
- Etinger, Y. and Melikyan, O.
The Policy of Non Alignment. (Moscow, No Date)
Translated from Russian.
- Falk, R.A.,
The New States and International Legal Order.
H.R. II (1966)
- Fawcett, J.E.S.
General Course on Public International Law.
Hague Recueil, I (1971)
- Fitzmaurice, Sir Gerald,
Some Problems Regarding the Formal Sources of
International Law.
Symbolae Verzijl (La Haye, 1958)
- Goodrich and Hambro,
Charter of the United Nations (Boston, 1946)
- Goodrich, L.M.
The United Nations (New York, 1955)
- Green, L.C.
International Law Through the Cases (London, 1967)
- Grzybowski, K.
Soviet Public International Law. (Durham, 1970)
- Hall, G.
Imperialism Today. (New York, 1972)
- Hazard, J.N. (ed.)
Soviet Legal Philosophy.
20th Century Legal Philosophy Series. Vol.5.
(Harvard University Press, 1951)
- Higgins, R.
The Development of International Law through the
Political Organs of the United Nations (Oxford, 1963)
- Hidlebrand, J.L.
Soviet International Law: An Exemplar For Optimal
Decision Theory Analysis (New York, 1969)
- Hovet, T.
Africa in the United Nations. (London, 1963)

- Isrealyan, V. (ed.)
Soviet Foreign Policy (1955-65) Translated from Russian.
(Moscow, 1967)
- Jenks, C.W.,
Law in the World Community. (London, 1967)
- Jennings, R.Y.
General Course on Principles of International Law.
vol. H.R.II (1967)
- Johnston and Chiu,
Agreements of the People's Republic of China, 1949-1967:
A Calendar. (Massachusetts, 1968)
- Kay, D.A.,
The New Nations in the United Nations, 1960-1967
(London, 1970)
- Kelsen, H.
Principles of International Law (ed.) R. Tucker
(New York 1966)
- Lauterpacht, H.
Recognition in International Law (Cambridge, 1947)
The Development of International Law by International
Court (London, 1958)
International Law (ed.) E. Lauterpacht, (Cambridge, 1970)
- Laves and Thomson,
UNESCO (London, 1958)
- Lefever, E.W.
Uncertain Mandate: Politics of the United Nations
Congo Operation. (Baltimore, 1967)
- Legum, C.
Pan Africanism: A Short Political Guide (New York, 1963)
- McKay, V.
Africa in World Politics. (New York, 1963)
- McNair, Lord.
The Law of Treaties. (Oxford, 1961)
- McWhinney, E.
Peaceful Coexistence And Soviet Western International Law
(Leyden, 1964)
- Nawaz, M.K; Molodcov, S.V; Blix, H; McWhinney, E;
Bystricky R; Srnska M; Outrata, V;
The Legal Principles Governing Friendly Relations and
Co-operation Among States in the Spirit of the United
Nations Charter. (Leyden, 1966)
- Nicolson, H.
Diplomacy. (London, 1939)

- O'Brien, W.V. (ed.)
The New Nations in International Law and Diplomacy
(London, 1965)
- O'Connell, D.P.
International Law. vol.1. (London, 1970)
- Okoye, F.
International Law and the New African States
(London, 1972)
- Oppenheim, L.
International Law (ed.) H. Lauterpacht. vol.I, 8th ed.,
(London, 1955)
- Parry, Clive,
The Sources and Evidences of International Law.
(Manchester, 1965)
- Ramundo, B.A.,
Peaceful Co-existence. International Law in the
Building of Communism. (Baltimore, 1967)
- Roling, B.V.A.,
International Law in an Expanded World. (Amsterdam, 1960)
- Sathyamurthy,
The Politics of International Co-operation. (Geneva, 1964)
- Satow, Sir Ernest.
A Guide to Diplomatic Practice. (London, 1922)
- Schwarzenberger, G.
A Manual of International Law, 5th ed. (London, 1967)
- Slusser and Triska,
A Calendar of Soviet Treaties. 1917-1957
(California, 1959)
- Solodnikov, V.G. (ed.)
U.S.S.R. Academy of Sciences. Africa Institute
Africa in Soviet Studies. Annual, 1968. (Moscow, 1969)
- Sorensen, M.
Manual of Public International Law (London, 1968)
- Stewart, R.B.
Treaty Relations of the British Commonwealth of Nations
(New York, 1939)
- Syatauw, J.J.G.
Some Newly Established Asian States And The Development
of International Law. (The Hague, 1961)

- Tammes, A.J.P.
Decisions of International Organs as a Source of
International Law. 94 H.R. II (1958)
- Thomas and Thomas
Non-Intervention: the Law and its Impact on the
Americas. (Dallas, 1956)
- Triska, J.F. and Slusser, R.M.
The Theory, Law, and Policy of Soviet Treaties.
(California, 1962)
- Tunkin, G.I. (ed.)
Contemporary International Law. (Moscow, 1969)
- UNESCO,
Agreement on the Importation of Educational,
Scientific and Cultural Materials. (Geneva, 1958)
- Vischer, De
Theory and Reality in Public International Law.
(Princeton, 1968)
- Wolfgang, Friedman, Oliver Lissityn and R. Pugh.
International Law - Cases and Material.
(St. Paul, Minn. 1969)
- Zadorozhny, G.
Peaceful Coexistence - (translated from Russian)
(Moscow, 1968)

IN RUSSIAN.

- Alekcerov, M.
Avtoreferat Dissertatsii. Synopsis of Theses.
(Baky, 1967)
- Baskin, V.C. (ed.)
Ekonomicheskoe Sotrudnichestvo SSSR so Stranami
Afriki. Economic Co-operation of the U.S.S.R.
with African Countries. (Moscow, 1968)
- Blishenko, I.P.
Diplomaticheskoe Prava. Diplomatic Law
(Moscow, 1972)
- Bobrov, R.L.
Osnovnie Problemi Teorii Mezhdunarodnovo Prava
Fundamental Problems of the Theory of International Law
(Moscow, 1968)
- Boguslavskii, M.M.
Immunitet Gosudarstva. State Immunity.
(Moscow, 1969)
- Breszhnev, L.I.
50 Let Vilikhikh Pabied Socialisma
50 Years of the Great Victory of Socialism.
(Moscow, 1967)
- Brikin, V.A.,
Diplomatia Novoi Afriki. Diplomacy of New Africa
- Chernogolovkin, N.V.
Krushenie Kolonialisma i Mezhdunarodnovo Prava
The Collapse of Colonialism and International Law
(Moscow, 1963)
- Gwanushkin, B.V.
Neitralitet i Neprisoedinenie. Neutrality and Non-Alignment
(Moscow, 1965)
- Gromiko, A.A. edit.
Afrika v Mezhdunarodnikh Otnosheniyakh
Africa in International Relations. (Moscow, 1970)
- Kozhenikov, F.I. (ed.)
Kurs Mezhdunarodnovo Prava. Treatise on International Law
(Moscow, 1966)
Kurs Mezhdunarodnovo Prava. Treatise on International Law
(Moscow, 1972)

- Krilov, S. (ed.)
Mezhdunarodnoe Pravo. International Law.
(Moscow, 1964)
- Krivtsov, C.G.,
Strani Afriki. African Countries. (Moscow, 1969)
- Kudriatsev, D.I.
Osnovi Mezhdunarodnovo Prava. Fundamentals of
International Law. (Moscow, 1970)
- Kurs Mezhdunarodnovo Prava v Chesti Tomakh. Treatise on
International Law in Six Volumes. vols. 1-5
(Moscow, 1967-1969)
- Lenin, V.I.
Gosudarstvo i Revolutsia. State and Revolution.
1965 ed. (Moscow, 1965)
- Levin, D.B. and Kalushnaya, G.P. (ed.)
Mezhdunarodnoe Pravo. International Law.
(Moscow, 1964)
- Licovskii, V.I.
Mezhdunarodnoe Pravo. International Law.
(Moscow, 1970)
- Lunts, L.A.
Mezhdunarodnoe Chastnoe Pravo. Private International
Law. (Moscow, 1963)
- Mironov, N.V.
Pravovoe Regulirovanie Vneshnikh Snoshenii SSSR -
1917-1970. Legal Regulations of the Foreign
Relations of the U.S.S.R. 1917-1970 (Moscow, 1971)
- Morozov, G.I.
Mezhdunarodnie Organizatsii. International Organisations.
(Moscow, 1969)
- Nekrasov, A.Ya.
SSSR i Razvivayushisia Strani v OON
U.S.S.R. and the Developing Countries at the UNO
(Moscow, 1970)
- Onan, E.C.
Ideologicheskaya Deitilnost Nezavicimikh Gosudarstv Afriki
Ideological Activities of the Independent States of Africa
(Moscow, 1971)

- Pchelintsev, E.C., Shkunaev, V.G., Etinger, Ya.Ya.
Abidineonie Natsii Protiv Kolonialisma i Racisma
na Yuge Afriki. The United Nations Against
Colonialism and Racism in South Africa.
(Moscow, 1970)
- Pozdniakov, E.A.
Molodie Gosudarstva Azii i Afriki v OON
The Young States of Asia and Africa at the UNO
(Moscow, 1971)
- Pozdniakov, V.C.,
Gosudarstvenaya Monopoliya Vneshnei Torgovli v SSSR.
State Monopoly of Foreign Trade in the U.S.S.R.
(Moscow, 1969)
- Semin, N.C.
Strani CEV i Afriki. The Comecon Countries and Africa.
- Shurshalov, V.M. (ed.)
Mezhdunarodnie Pravovie Formi Sotrudnichestva
Socialisticheskix Gosudarstv. International Legal
Forms of Co-operation of the Socialist States.
(Moscow, 1962)
Universitet Drushbi Narodov imeni Patricia Lumumbi
Razvivayushisia Strani i Mezhdunarodnoe Pravo
Peoples Friendship University named after Patrice
Lumumba. The Developing Countries and International Law.
(Moscow, 1971)
- Shurshalov, V.M.
Mezhdunarodnie Pravootnosheniya. International Legal
Relations. (Moscow, 1971)
- Sokolov, Yu.N.
Mezhdunarodni Turizm i yevo Pravovoe Regulirovanie.
International Tourism and its Legal Regulation.
(Moscow, 1969)
- Tunkin, G.I.
Ideologicheskaya Bariba i Mezhdunarodnoe Pravo.
Ideological Struggles and International Law.
(Moscow, 1967)
Teoria Mezhdunarodnovo Prava. Theory of International Law.
(Moscow, 1970)
- Zevin, L.Ye.
Novie Tendentsii v Ekonomicheskom Sotrudnichestve
Socialisticheskikh i razvivayushikh Stran.
New Tendencies in the Economic Co-operation of the
Socialist and Developing Countries. (Moscow, 1970)

DOCUMENTS, PERIODICALS, COLLECTIONS AND YEARBOOKS.IN ENGLISH

- Abi-Saab, G.M.
The Newly Independent States and the Scope of Domestic Jurisdiction. P.A.S.I.L. 99, 1960.
- Africa Research Bulletin (Political, Social and Cultural)
(1968-1972)
- Ago, R.
Positive Law and International Law. A.J.I.L. 51
(1957) p.691.
- Anand, R.P.
Rok of the "New" Asian-African Countries in the Present International Legal Order. A.J.I.L. 56, 1962, p.383.
- Asbeck, F.M. van.
Growth and Movement of International Law. I.C.L.Q.
1962, p.1054.
- Baratashvili, D.I.
International Law Principles of Peaceful Co-existence.
International Affairs. vol.3, 1972.
- Benjamin, P.
Soviet Treaty Practice on Commercial Arbitration since 1940. A.J.I.L. 53 (1959) p.882.
- Bleicher, S.A.
The Legal Significance of Re-Citation of General Assembly Resolutions. A.J.I.L. 63, 1969, p.444.
- Brezhnev, L.
24th Congress of the C.P.S.U.
Report of the Central Committee of the Communist Party of the Soviet Union. (Moscow, 1971)
- Brierly, J.L.
Matters of Domestic Jurisdiction. BYIL. VI. (1925) p.8.
- Brown, P.M.
Recognition of Isreal. A.J.I.L. 42, 1948.
- Brownlie, I.
Basic Documents in International Law. (Oxford, 1967)
- Bulletin of Legal Developments. B.I.I.C.L. No.22, 1971.
No. 15, 1972.

- Butler, W.
"Socialist International Law" or Socialist Principles
of International Law. A.J.I.L. 65, 1971, p.796.
- Butlitsky, A.
OAU Assembly of Solidarity and Reconciliation.
Int. Affairs. No. II, 1970, p.102.
- Chakste, M.
Soviet Concepts of the State, International Law and
Sovereignty. A.J.I.L. 43 (1949) p.21.
- Chertkov, D.
The U.S.S.R. and Developing Countries. Economic
Relations. International Affairs, Moscow, August, 1972.
- 24th Congress of the CPSU
March 30 - April 9, 1971 (Documents) Moscow, 1971.
- Corbett, P.E.
The Consent of States and the Sources of the Law of
Nations. B.C.I.L. VI (1925) p.20.
- Elias, T.O.
"African Law" in Larson's Sovereignty within the Law.
(London, 1965) p.210.
- Emerson, R.
Self Determination. A.J.I.L. 65, (1971) p.459.
- Fawcett, J.E.S.
The Legal Character of International Agreements.
B.Y.I.L. XLIII, (1968-1969) p.381.
- Fifield, R.H.
The Five Principles of Peaceful Co-existence.
A.J.I.L. 52, (1958) p.504.
- Freeman, A.V.
Some Aspects of Soviet Influence on International Law.
A.J.I.L. 62 (1968) p.710.
- Ginsburgs, G.
"The View from Without" P.A.S.I.L. 62nd Annual Meeting
(1968) p.196.
- Godoy, H.H.
International Law and the New Political Movements in
Latin America. P.A.S.I.L. 99, (1960) p.96.
- Gorelik, R.
Copyright in the U.S.S.R.
Copyright Bulletin, vol.III, No.4, 1969.

- Green, L.C.
Impact of the New States on International Law.
Isreal Law Review. 4 (1969) p.27.
- Hamzeh, H.
Agreements in Simplified Form. Modern Perspective.
B.Y.I.L. XLIII.
- Haskyns, C.
Trends and Developments in the Organisation of African
Unity. Y.B.W.A. 21 (1967) p.164.
- Hazard, J.
Legal Research on "Peaceful Co-existence" A.J.I.L. 51
(1957) p.63.
Pashukanis is no Traitor. A.J.I.L. 51, (1957), p.385.
Codifying Peaceful Co-existence. A.J.I.L. 55 (1961) p.109.
Renewed Emphasis upon a Socialist International Law.
A.J.I.L. 65, (1971) p.142.
- Higgins, R.
The United Nations and Law Making: The Political Organs.
P.A.S.I.L. (1970) p.37.
- Houben, Peit-Hein.
Principles of International Law Concerning Friendly
Relations and Co-operation Among States.
A.J.I.L. 61 (1967) p.703.
- Ijalaiye, D.A.
Was "Biafra" at any time a State in International Law?
A.J.I.L. 65 (1971) p.551.
- Intervention and the Developing States - Regional Meeting.
A.J.I.L. 63 (1969) p.306.
- Kelsen, Hans.
Recognition in International Law. Theoretical Observations
A.J.I.L. 35 (1941) p.605.
- Kiva, A.
The Role of the Young Nationalist States in International
Relations. International Affairs. (Moscow) No.3,
(1973) p.70.
- Kolosov.
International Law and Co-operation.
International Affairs. (Moscow) November, 1972. p.54.
- Kunz, J.L.
Pluralism of Legal and Value Systems and International
Law. A.J.I.L. 49 (1955) p.370.

- Lachs, M.
Recognition and Modern Methods of International
Co-operation. B.Y.I.L. XXXV (1959) p.252.
- Lapena, I.
International Law Viewed through Soviet Eyes.
Th. Y.B.W.A. 15, (1961) p.204.
- McDougall, M.S. and Lasswell, H.D.
The Identification and Appraisal of Diverse Systems
of Public Order. A.J.I.L. 53 (1959) p.1.
- MacGibbon, I.C.
Some Observations on the Part of Protest in International
Law. B.Y.I.L. XXX, (1953) p.293.
Scope of Acquiescence in International Law. B.Y.I.L. XXI,
(1954) p.143.
Customary International Law and Acquiescence.
B.Y.I.L. XXXIII, (1957) p.115.
- McWhinney, E.
"Peaceful Co-existence" and Soviet Western International
Law. A.J.I.L. 56 (1962) p.951.
Changing International Law Method and Objectives.
The "New" Countries and the "New"
- Mallamud, J.
Optional Succession to Treaties by Newly Independent
States. A.J.I.L. 63 (1969) p.782.
- Marshall, B.
International Law and Politics in French Africa.
P.A.S.I.L. 99, (1960) p.91.
- Mboya, I.
Technology in the Development of Africa. A Critique;
Impact of Science on Society. XIX, No.4.
- Molchanov, Y.
Soviet Foreign Policy as a Factor Promoting the
Revolutionary Transformation of the World.
International Affairs. No.12, 1972, p.1.
- Myers, D.P.
Names and Scope of Treaties. A.J.I.L. 51 (1957) p.574.
- Nasinovsky, E.V.
The Impact of Fifty Years of Soviet Theory and Practice
on International Law. P.A.S.I.L. 62nd Annual Meeting,
(1968) p.189.
- Nigeria Official Gazette - 1967.

- Novoseltsev, E.
 Leninist Foreign Policy and the Revolutionary
 Renewal of the World.
 International Affairs, Moscow, May, 1971. p.9.
- Osakwe, C.
 Socialist International Law Revisited.
 A.J.I.L. 66, (1972) p.596.
- Report on the O.A.U. Consultative Mission to Nigeria.
 Lagos, 1967. (Pamphlet)
- Rosenstock, R.
 The Declaration of Principles of International Law
 Concerning Friendly Relations: A Survey.
 A.J.I.L. 65 (1971) p.713.
- Schlesinger, R.
 Research on the General Principles of Law Recognised
 by Civilised Nations. A.J.I.L. 51 (1957) p.734.
- Sergeyev, V.
 The Developing Countries and the Soviet Union.
 International Affairs. August, 1972.
- Sinha, S.P.
 Perspective of the Newly Independent States on the
 Binding Quality of International Law. I.C.L.Q. 14
 (1965) p.121.
- Sloan, F.B.
 The Binding Force of a 'Recommendation' of the
 General Assembly of the United Nations.
 B.Y.I.L. XXV, (1948) p.1.
- Spencer, J.
 The Impact of International Law on Political and
 Social Processes within the African Context.
 P.A.S.I.L. 66 (1972) p.52.
- Starke, J.G.
 The Acquisition of Title to Territory by Newly
 Emerged States. B.Y.I.L. XLI (1965-1966) p.411.
- Triska, J.F. and Slusser, R.M.
 Ratification of Treaties in Soviet Theory, Practice
 and Policy. B.Y.I.L. XXXIV (1958) p.312.
- Tunkin, G.
 International Law and Ideological Struggles.
 International Affairs. No.11, 1971, p.25.

Wilk, Kurt.

International Law and Global Ideological Conflict:
Reflections on the Universality of International Law.
A.J.I.L. 45 (1951) p.648.

Wright, Q.

International Law and Ideologies.
A.J.I.L. 48 (1951) p.648.

Yearbook of International Law Commission, Reports (1949, 1962)

Young, E.

The Development of the Law of Diplomatic Relations.
B.Y.I.L. XL (1964) p.141.

IN RUSSIAN.

Aleskerov, M.N.

Yuridicheskaya Priroda Dagavornikh Ekonomicheskikh Otnosheniyei mezhdu SSSR i Maladimi Suverenimi Gosudarstvami Azii i Afriki.

"Uchennie Zaniski" Azerbaidjanskovo Universiteta, Seria Yuridicheskikh Nauk . Hereafter referred to as "SN" A.S.U., SJS.

Juridical Nature of Contractual Economic Relations Between the U.S.S.R. and Young Sovereign States of Asia and Africa.

"Scientific Notes" of Azerbaidjan University.
Serial - Juridical Sciences No.2, (Baku, 1965) p.3.

Progressivnoe Viliyaniye Mezhdunarodnovo Pravavovo Sotrudnichestva SSSR c Maladimi Nezavicimimi Gosudarstvami na Razvitiye Mezhdunarodnovo Prava. "Uchennie Zaniski" Azerbaidjanskovo Universiteta. Seria Yuridicheskikh Nauk.

The Progressive Impact of International Legal Co-operation of the U.S.S.R. with the Young Independent States on the Development of International Law.

"Scientific Notes" of Azerbaidjan State University.
Serial-Juridical Sciences. No.1. (Baku, 1967) p.3.

Yuridicheskaya Priroda Torgovikh Soglasheniyei SSSR c Razvivayushimisia Stramami "UZ" AGU, SYN.

Juridical Nature of Trade Agreements of the U.S.S.R. with Developing Countries.
"SN" ASU, SJS. No.2 (Baku, 1967) p.26.

Pravaviye Formi Politicheskovo Sotrudnichestva SSSR c Maladimi Gosudarstvami (tekst lektsiy)

Legal Forms of Political Co-operation of the U.S.S.R. with the Young States (text of lecture) (Baku, 1968)

Nikotorie Aspekti Dagavorov SSSR c Nezavicimimi Gosudarstvami Azii i Afriki.

Sovietskii Ezhegodnik Mezhdunarodnovo Prava. (1966-67)

Some Aspects of Agreements of the U.S.S.R. with Independent States of Asia and Africa.

Soviet Yearbook of International Law (1966-67)
Moscow, 1968, p.219.

Bolshaya Sovietskaya Entsiklopediya.

Great Soviet Encyclopaedia. vol.43, 2nd ed. Moscow, 1954.

Borisov, K.G.

Mezhdunarodno-pravaviye Aspekti Mezhdunarodnovo
Turizma.

International Legal Aspects of International Tourism.

Sovietskoe Gosudarstvo i Pravo,

Soviet State and Law hereafter referred to as SGIP.

No. 7 (1965) p.138.

Dokumenti Vneshei Politiki SSSR.

Documents on Foreign Policy of the U.S.S.R. Moscow, 1968.

Genkin, D.M.

Printsip Naibolshevo Blagopriyastvovaniya v Torgovikh
Dagavorov Gosudarstv.

The Principle of the Most-Favoured-Treatment in Trade
Agreements of States. SGIP No.9. (1958).

Kozintsev, B.P.

Subjekti i Kharakter pravo-otnosheniya voznikayushikh
v Sfere Vneshne ekonomicheskikh Sviazi SSSR s Razvivayushimisia
Stranami.

The Subjects and Character of Legal Relationships which
arise in the spheres of External Economic Ties of the
U.S.S.R. with the Developing Countries. S.G.I.P. No.4.
(1965) p.72.

Mezhdunarodno-Pravovoe Regulirovaniye Sotrudnichestva
SSSR s Rozvivayushimisia Stranami.

International-Legal Regulation of Co-operation of the
U.S.S.R. with the Developing Countries. S.G.I.P. No.11,
(1967) p.120.

Ministerstvo Inostranikh Del SSSR,

SSSR i Strani Afriki 1946-1962

Dokumenti i Materiali, Tom 1 (1946 - Sentiabri 1960)

Ministry of Foreign Affairs of the U.S.S.R.

U.S.S.R. and African Countries 1946-1962

Documents and Materials, vol.1. (1946 - September 1960)
(Moscow, 1963)

Ministerstvo Inostranikh Del SSSR,

Sbornik Deistvuyushikh Dagavorov Soglashenii i Konventsii
Zakluchenikh SSSR s Inostraniami Gosudarstvami.

Ministry of Foreign Affairs of the U.S.S.R.

Collection of Treaties, Agreements and Conventions in
Force Concluded by the U.S.S.R. with Foreign Countries,
Moscow, Volumes XXII (1967), XXIV (1971).

Nikhamin, V.P.

"Sovietskaya Diplomatiya i Neitralisticheskie Strani Azii i Afriki". (v Kinige), O Soveremennoi Sovetskoi Diplomatii.

"Soviet Diplomacy and Neutral Countries of Asia and Africa". (as in the book) On Contemporary Soviet Diplomacy. (Moscow, 1963) p.57.

Sergeev, V.

Sovietskii Sayuz i Razvivayushisia Stran Mezhdunarodnaya Zhizn

The Soviet Union and the Developing Countries International Affairs. No. 4 (1971) p.34.

Shurshalov, V.M.

Mezhdunarodno-Pravoviye Printsipi Sotrudnichestva Socialisticheskikh Gosudarstv.

International Legal Principles of Co-operation of the Socialist States. S.G.I.P. No.7 (1962) p.95.

XX S'ezd Kommunisticheskoi Partii Sovetskovo Soyuz.

20th Congress of the Communist Party of the Soviet Union. Moscow, 1956.

Solodnikov, V.G.,

Vneshne Ekonomicheskie Sviazi SSSR s Razvivayu shimisia Stranami.

Foreign Economic Ties of the USSR with the Developing Countries.

Narodi Azii i Afriki (The Peoples of Asia and Africa) (hereafter referred to as NAA) vol.5, 1971, p.1.

Targovie Sviazi SSSR s Razvivayushimisia Stranami

Trade Ties of the U.S.S.R. with Developing Countries. NAA vol.6, 1971, p.1.

Tuzmuhamedov, R.A. edit.

Nezavimaya Afrika v Dokumentakh (Independent Africa in Documents)

Universitet Drushbi Narodov imeni Patric a Lumumbi (Publishing House of the Peoples' Friendship University named after Patrice Lumumba) (Moscow, 1965)

Vneshnaya Politika SSSR i Mezhdunarodnie Otnosheniya Sbornik Dokumentov IMO.

Foreign Policy of the U.S.S.R. and International Relations (Collected Documents) Institute of International Affairs. Moscow, 1970.

Yuridicheski Slovari.

Yuridicheski Literaturi

Legal Dictionary. Juridical Literature. Moscow, 1953.

NEWSPAPERS (1960-72)

Christian Science Monitor (London)

Daily Telegraph

Financial Times (London)

The Guardian (Manchester)

Izvestiya (Moscow)

International Herald Tribune

Johannesburg Stan. (1961)

New York Herald Tribune

New York Times

The Observer

Observer Foreign News Service

Pravda (Moscow)

Soviet News

Sunday Times (London)

West Africa.

DOCUMENTS OF INTERNATIONAL ORGANISATIONS.UNITED NATIONS:

Ecosoc Resolutions 727^A (XXVIII) 27th July, 1959.
 740^C (XXVII) 31st July, 1959. On Measures
 for Promoting the International Exchange of Scientific and Technical
 Experience and on the Economic Development of the Underdeveloped Countries.

E/CN, 14/SR, 129(VIII) - Economic Commission for Africa, 8th Session,
 Lagos, 13th - 25th February, 1967.

5 Repertory of the United Nations Practice.

Treaty Series, Volumes, 20, 165, 457, 472, 493, 596, 608, 655, 672.

UNCTAD, Final Act and Report, E/Conf. 46/141. vol.1.

UNCTAD, Final Act and Report, Annexe, A.VI.3.

UNCTAD, Doc.A.IV.25. "Conditions of Economic and Technical Co-operation".

UNCTAD, Report of the Conference on its third Session, Santiago, 1972.

UN Conference on the Law of the Sea. O/R. vol.II.

UN.GA Resolutions 1260 (XIII) of 14th December, 1958 and 1429 (XIV)
 of 5th December, 1959, On the Co-ordination of the Results of
 Scientific Research.

UN.GA 1514 (XV) of 14th December, 1960, "Declaration on the Granting
 of Independence to Colonial Countries and Peoples".

UN.GA 1654 (XVI) Special Committee on Colonialism.

UN.GA 1717 (XVI) of 19th December, 1961 - On the Development of Education
 in Africa.

UN.GA 1742 (XVI) Self-determination in Angola.

UN.GA 1761 (XVII) Sanctions and Security Council Action against South
 Africa on Apartheid.

UN.GA 1807 (XVII) Approval of Special Committee Report on Portuguese
 Territories and Request for a halt to the sale and supply of arms to
 Portugal.

UN.GA Resolutions 1966 (XVIII) 2103 (XX), 2463 (XXIII) UN Special
 Committee on the Principles of International Law Concerning Relations
 and Co-operation among States.

UN.GA 2625 (XXV) of 24th October, 1970. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States.

UNESCO. Reports and Papers on Mass Communication Developing Information, Mass Media in Africa. Press, Radio, Film, Television, No. 37. Unesco (Paris, 1967)

UNESCO Statistical Yearbook, 1970.

World Health Statistics Report. vol.25, No.3, 1972.

W.H.A. Resolutions 24.59 of 20th May, 1971.

25.17 of 19th May, 1972 on Research in the Organisation of Community Health Service.

W.H.A. 25.42 of 25th May, 1972 - Training of National Health Personnel.