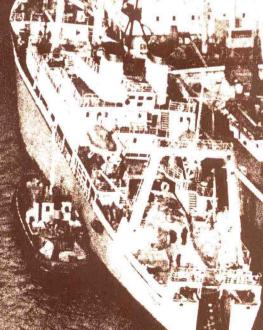


SOVIET
INTERNATIONAL
LAW AND THE
WORLD
ECONOMIC
ORDER

KAZIMIERZ GRZYBOWSKI



Soviet International Law and the World Economic Order

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Preface

This volume updates my earlier work, Soviet Public International Law and Diplomatic Practice, and follows the same approach to the study of the institutions of Soviet international law. In the meantime, however, Soviet doctrines and practice have changed. In the period covered by the earlier volume the central formula held that socialist countries belong to an economic order of their own that is separate from the capitalist system. Today, a new formula has been adopted—a one-world economic system—and the socialist countries are a part of it.

This study follows, as is obvious, a policy-oriented approach to the analysis of international law. A purely formal statement of the principles and norms of international law tells the reader little of the real nature of the international community and the real objectives of legal and political transactions in international relations. The real life of the international community consists of the activities of a great number of economic, social, and political institutions that operate in conditions created by the international order. In the present period attempts at international economic cooperation take the form of plans that coordinate the interests of industrialized and developing countries. Prime examples are the European Economic Community with its Lomé and ACP agreements. Similar in scope and purpose is the U.S. Caribbean Basin Recovery Act. Such schemes in the free world provide a framework for governmental and private initiatives.

The economic integration plans described here, which involve countries with planned economies, raise a series of legitimate questions: What are the techniques and institutions of integration? How did these plans affect the structures of socialist international organizations? How do new policy trends affect the doctrines and principles of international law?

This study is confined to Soviet diplomatic practice in its relations with the international community and other socialist states. I do not purport to give a full picture of the various jurisprudential trends in the community of Soviet publicists. That would require a much broader coverage of Soviet writings and would add little to the purpose of this endeavor.

It is my pleasant task to thank all those who have lent a helping hand in the realization of this project. The Duke University Research Council has eased the financial burden. My colleagues and Dean Carrington of the Law School followed the progress of my work with active interest. Professor Horace B. Robertson read parts of the manuscript and offered vital suggestions. Special thanks are due to Claire Germain of the Law Library. A good deal of research was done in the Library of Congress, where two of my dear friends, Dr. Ivan Sipkov and Dr. Joseph Whelan, made every effort to assist me.

Last, but not least, Mrs. June C. Hubbard and Mrs. Elizabeth B. Nettleton prepared the manuscript for publication with patience and enthusiasm—a tedious and exacting task.

April 1987 Durham, North Carolina

Abbreviations

AJIL American Journal of International Law

Ann. Dig. Annual Digest and Reports of Public International Law Cases

Dok. Ministerstvo inostrannykh del SSSR, vol. i (1957).

Dokumenty vneshnei politiki (Ministry of Foreign Affairs of the USSR Documents of Foreign Policy)

ILM International Legal Materials

KCA Keesing Contemporary Archives

Lenin, Soch. Lenin, Sochineniia (4th ed.)

RCADI Recueil des Cours d'Académie de Droit International

RGDIP Revue général de droit international public

Ministerstvo inostrannykh del, Sbornik
deistvuiushchykh dogovorov, soglashenii i
konventsii zakliuchonnykh SSSRs inostrannymi
gosudarstvami (Ministry of Foreign Affairs,
Collection of Treaties, Agreements and
Conventions in Force Concluded by the SSSR with
Foreign Countries)

SEMP Sovetski ezhegodnik mezhdunarodnogo prava (Soviet Yearbook of International Law) SGP Sovetskoe gosudarstvo i pravo (Soviet State and Law)

SPIL Soviet Public International Law Doctrines and Diplomatic Practice, K. Grzybowski, 1970

SU RSFSR Sobranie uzakonenii i rasporiazheni raboche krestianskogo pravitelstva RSFSR 1917 (Collections of Laws and Decrees of the Worker-Peasant Movement of the RSFSR, 1917)

UNTS United Nations Treaty Series

USDSB United States Department of State Bulletin

Ved. Vedomosti Verkhovnogo Soveta SSSR (Bulletin of the Supreme Soviet of the USSR)

VPSS Vneshnaia politika SSSR, Sbornik Dokumentov

VT Vneshnaia Torgovla

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1

Soviet Global Expansion

There was never a question in the public mind of the preeminent position of the Soviet Union. Following World War II it emerged as the largest military power on the huge Eurasian continent. While still rebuilding its devastated economy the Soviet Union was able to divert resources and develop the technology to become a member of the nuclear club. It launched the first space vehicle, challenging the United States and the West with this effort.

The Soviet Union and the Oceans

Following the death of Stalin the focus of Soviet expansion changed. The next target was a presence on the oceans. The Soviet Union has developed a navy second only to that of the United States. It also proceeded with the construction of a merchant marine. While American merchant shipping shrank, Soviet shipping reached and then surpassed that of the United States. Even more remarkable was the development of the Soviet fishing fleet. It became the largest fleet of its kind, and its practices have greatly spurred the protection and conservation of world fishery resources. Finally, the Soviet Union became an important foreign trader, with connections on all continents.

The Fishing Fleet

Under Stalin the Soviet fishing fleet concentrated on inland freshwater fisheries and maritime fisheries in the Caspian, Black, and Baltic seas. Then, in the late 1950s, the Soviet Union began intensive fishing operations in the Bering Sea and the Gulf of Alaska. In the mid-1960s the fleet extended its operations southward to the waters of Oregon and Washington, and by 1972 Soviet trawlers were fishing off the coast of California.

In 1961 Soviet fishing ships appeared off the Georges Bank, taking 68,000 tons of fish. By 1965 Soviet exploitation extended south to Chesapeake Bay and beyond, and the Soviet catch reached over .5 million tons taken from U.S. waters, far in excess of the American fishing industry and far in excess of the harvest recommended by scientists. As a result, certain species of fish traditionally abundant in the seas off the U.S. and Canadian coasts were threatened with extinction.

In response to Soviet fishing practices, the United States, Canada, and a number of other countries were forced to adopt conservation measures that limited Soviet fishing off their coasts. In 1975 the Canadian government closed its ports to Soviet ships, forcing the Soviet government to agree to reduce its fishing operations by 40 percent, while in 1976 the U.S. Conservation and Management Act was signed into law.

The most rapid increase in Soviet catches during the 1964–73 period occurred in the central eastern Atlantic off the coast of West Africa. In 1964 this region contributed less than 3 percent of the total Soviet catch, but by 1973 its share rose to more than 1 million tons. In response, West African countries extended their economic zones to 200 miles off their coasts.

A similar series of events happened off the coast of Argentina. The Soviet fishing fleet began its fishing operations in those waters in 1966, catching 73,000 tons of fish. Next year a veritable armada of Soviet vessels appeared, forcing the Argentinian government to declare 200 miles of the coastal seas as its economic zone. Soviet fleets tried to disregard the action of the Argentines. However, following an incident involving two Soviet factory ships, which were fired on when they refused to obey the signals of Argentinian naval vessels,

the Soviet catch that in 1967 had amounted to 677,000 metric tons was reduced to negligible proportions. And again, the same thing happened in the cases of Uruguay and Brazil: both countries were forced to declare 200-mile conservation zones. Waters off western Latin America were similarly declared to be out of bounds to Soviet fishing operations.

The latest Soviet fishing thrust has been in the Indian Ocean, the areas around Australia and New Zealand, in the southern Pacific, and off Antarctica. The average annual growth of the Soviet catch amounted to more than 18 percent per year, increasing from 1.8 million tons in 1950 to over 10 million tons in 1975, or close to 15 percent of the world's fishing catch.2

Merchant Marine

Prerevolutionary Russia cared little for the development of its merchant marine. Fairly extensive shipbuilding facilities were oriented toward naval construction, and as a result few merchant ships were constructed in Russian shipyards. In 1913, 85 percent of Russian merchant ships were foreign-built. In the first decade after World War II Soviet foreign trade was mostly with other communist countries in Europe, and later that trade expanded into Asia. Because these countries bordered on the Soviet Union, almost none of the trade was seaborne.

This policy was drastically changed after the death of Stalin. In the middle of 1950 the volume of Soviet foreign trade outside the Soviet bloc increased rapidly, bringing with it an even greater expansion of the seaborne trade.3 Much of the new trade with noncommunist countries was to distant ports in other continents, making sea transport more important than before. Under the new policy the Soviet merchant marine expanded from 2 million deadweight tons in the early 1950s to 12 million in 1968. In 1974 the Soviet merchant marine accounted for 14.1 million tons, about 3 percent of the world's total; the fleet then ranked tenth in the world. The chief mission of the Soviet merchant marine was the carriage of Soviet cargo. Of the 114 million tons moved by the Soviet fleet in international trade during 1974 about 90 million consisted of Soviet exports and imports.

Cross trade is important in Soviet merchant marine operations. Tonnages carried in cross trade grew from 7.5 million in 1965 to over 22 million in 1974. With the expansion of Soviet liner services, the fleet has been carrying increasing quantities of manufactured goods between noncommunist industrial countries. The first Soviet lines in the cross trade were initiated in 1965. By mid-1975 the total number of lines had risen to fifty-eight, twenty of them largely or entirely in cross trade.

In managing its international cargo lines the USSR prefers to operate independently outside the conference system. As nonconference operators, Soviet lines charge rates 15 percent below those of their conference competitors. Although Soviet ships are slower and their services more primitive in comparison with other lines, lower rates have attracted a consistent volume of cargo from noncommunist shipowners, causing a good deal of concern among Western nations. ⁴

East-West Economic and Political Rapprochement

In the early 1960s Soviet leaders decided that the integration of the socialist commonwealth depended on replacing centralized direction of the integration process by the autonomous cooperation of its members. The integration plan was to be jointly mapped. The execution of individual phases of the plan had to be decided nationally by each country involved.

A decade later (1971) it was decided that both the integration and modernization of socialist industries depended upon effectively integrating Eastern European economies into the world economic system. Socialist division of labor was to be part and parcel of the worldwide division of labor.⁵

In the span of a few years the Soviet Union and the Eastern European socialist countries have managed to achieve various forms of economic cooperation with the West. Trade networks and technical and scientific cooperation agreements between the two systems have proliferated. A special effort was made by the secretary of the Council for Mutual Economic Assistance (CMEA) to establish direct contacts with the European Economic Community. Economic cooperation as a basis for worldwide security was given a prominent place in the

Helsinki Declaration of 1975. Part 2 of the declaration recognized that growing global interdependence compels all nations to "increase common and effective efforts towards the solution of major world 'problems.' "

In the area of trade cooperation special attention was given to constructive methods to improve exchange of goods, to establish trading organizations, and to give them practical facilities for selling their goods and services. Great emphasis was placed on the dissemination of information (including statistics) about production and foreign trade, on market studies, and on the participation of small and medium firms in foreign trade operations. Participating states recognize that, in their trade relations, they should not only avoid disrupting their mutual markets, but also avoid using safeguards to protect their markets, except in accordance with international law.7

Once the decision was reached, trade and economic cooperation with the industrialized West expanded rapidly. East-West trade grew faster than intrabloc trade and new types of commercial agreements regulating East-West economic relations have multiplied. Instead of self-balancing trade agreements concluded for short periods of time (a year), other types of commercial agreements were initiated, including long-term trade agreements analogous to those made between the free economy countries (with most-favored-nation clauses), long-term economic cooperation agreements, and technological and scientific cooperation agreements.8 Socialist countries have also joined in the General Agreement on Tariffs and Trade (GATT). Credit restrictions that existed in the Organization for Economic Cooperation and Development (OECD) and the Council for Mutual Economic Assistance (CMEA) member countries were largely lifted.9

Technology transfer occupies a central place in the expanded trade. Various types of contracts are used, depending on what type of Western asset is involved: patents, know-how, machinery and factory equipment, or capital investment.

An important place in the integration process belongs to intra-German trade, which—although not technically international—is an important channel for economic exchanges between East and West. 10

Eastern European socialist countries have had to abandon the principle of bilateralism in trade and economic cooperation agreements. As members of GATT these countries have accepted, with some limitations, the basic principles of GATT trade. Even the Soviet Union—although not a member of GATT—has become party to many long-term agreements and, in a limited way, has abandoned the practice of bilateralism.

This change of policy from isolationism to integration in the world economic system and the international division of labor has produced a new situation in Soviet public international law. Although the flow of trade and the degree of East-West cooperation may vary, the formal and constant links that they entail are maintained. The Soviet Union has joined a number of commodity conferences and industrial property and copyright unions. It has established particularly close connections with the foreign banking organizations, either directly through the Soviet Bank of Foreign Trade or indirectly through CMEA banks (international investment banks—IIB) in Moscow or the International Bank for Economic Cooperation (IBEC), also in Moscow.

A change of policy and the growing Soviet and East European involvement in the world trade have greatly moderated revolutionary theories on the legal system governing international relations. This change is particularly reflected in the Soviet position on the reform of the law of the sea. Having created a strong navy, merchant marine, and fishing fleet, the Soviet Union insistently advocated the traditional freedoms of the sea, including the freedom of passage through international straits.

The Constitution of 1977

The Constitution of 1936, Stalin's constitution, has long ceased to reflect the real state of the Soviet Union's affairs—both internally and externally. The new Constitution of 1977 departs in many important respects from its predecessor. The Soviet Union is described as a sovereign state, with a single territory, single nationality, and centrally managed international relations.

The 1977 constitution and the legislation enacted in its wake describe the territory of the Soviet Union (including the sea areas), the status of aliens, the organization of the Soviet Foreign Service, foreign missions in the Soviet Union, treaty-making power, central organs