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Page 31

THE ARBITRATION BETWEEN THE LENA GOLDFIELDS, L' AND THE SOVIET GOVERNMENT

*Arthur Nussbaum **

The arbitration proceedings conducted in 1930 by Lena Goldfields, Ltd., London, against the Soviet Government constitute the most remarkable occurrences in the field of arbitration. It is the only arbitration, in fact the only international law case, in which the Soviet Government was a party. ¹ Of still greater significance are the actions taken in the case by the Soviet Government against the problems to which they gave rise. The implications extend beyond the legal area and impart to the case a lasting interest. It has been repeatedly referred to in recent publications, ² but it has not yet been discussed in detail, probably because the material is readily available. In the following an attempt has been made to fill the gap.

The text of the comprehensive award was published in *The Times* (London) of September 3, 1930. It is divided into thirty-three sections which will be referred to in the following. The main facts of the case are these: ³

Page 32

The Lena Goldfields, Ltd., which had operated in Siberia as early as Tzarist times, ⁴ received from the Soviet Government in 1925, that is, during the conciliatory N.E.P. (new economic policy) period - a vast exploring, mining and transportation concession (Award, Nos. 16-18). After N.E.P. was replaced in 1929 by the Five Year Plan, the Soviet Government withheld from Lena performance of a vital nature, owed under the concession contract (Award, No. 21 [a] to [f]). This was followed by a class war against Lena employees, as serving a capitalist enterprise. Thereupon the company's staff resigned in large numbers. As a result the Company was disorganized (Award, No. 21 [g]). Finally, on the night of December 15, 1929, the Government, through the Red Army, carried out a formidable raid at practically all of Lena's many establishments which were separated from each other by thousands of miles (Award, No. 21 [h]). The employees, among them the leading officials - managers, metallurgists, electrical engineers, etc. - were seized and searched and their plans and reports of a technical character taken away together with confidential documents; twelve officials were arrested and prosecuted on charges of "counter-revolutionary activity and espionage" (Award, No. 21 [h]). ⁵ Under these circumstances the Company discontinued the operation of the plants which, together with the secret processes described in the seized documents, were taken over by the Soviet Government. The Company at that time had £1,000,000 invested in the concessions (Award, Nos. 20[a] and 23). ⁶

Under the arbitration clause contained in the Concession Agreement, Lena, in February, 1930, brought suit against the Soviet Government for

Page 33

the payment of £13,000,000 on the ground that there had been created for Lena "total impossibility of either performing its obligations under the Concession Agreement, or enjoying its benefits" (Award, No. 25). The Soviet Government thereupon : as its arbitrator Dr. S. B. Chlenow, a Soviet citizen; Lena appointed Sir Leslie Scott, a former Attorney General; and both el "super-arbitrator" (chairman) Dr. Otto Stutzer, a professor of mining at the Bergakademie (mining college) of Freiberg, Sax telegram of April 27, 1930, signed jointly, both parties requested the Chairman to fix the first Session of the tribunal for Ma 1930. The Chairman fixed the session accordingly (Award, No. 9), with the London Royal Courts of justice as the place of th hearing.

Shortly afterwards the Government changed its attitude. By telegrams of May 5, 1930, to the Chairman and to Lena, it decl Lena had dissolved the Concession Agreement by stating that it took no further responsibilities, by recalling its engineers an withdrawing the powers of attorney from its representatives. Under these circumstances, the Government said, the arbitrat tribunal "had ceased to function" (Award, No. 10). Lena replied that the arbitral tribunal was properly and completely const that the company would attend on May 9. When the non-Soviet arbitrators and Lena's attorney met on this day, Dr. Chleno counsel for the Government did not appear. The situation arrived at had been provided for by the carefully drawn arbitratio of the Concession Agreement in the following terms: (Award, No. 5)

If an receipt, of the summons from the super-arbitrator appointing the time and place of the first Session, one of the parties, in the absence of insurmountable obstacles to such action, does not send its arbitrator or if the latter refuses to take part in the Court of Arbitration, then, at the request of the other Party, the matter in dispute is settled by the super-arbitrator and the other member of the Court, on condition that such decision is unanimous.

Consequently, the tribunal consisting of the Chairman and Sir Leslie Scott decided to go ahead with the proceedings. Copies decision were sent to both Parties but the Government persisted in its refusal to attend on the ground that the tribunal lack jurisdiction (Award, Nos. 11 and 12). On May 29, Lena submitted its specified Statement of claims (Award, No. 13). On Sep 1930, after five weeks of hearings,⁷ the tribunal rendered its award which held the Government liable to pay £8,500,000, plus 12% interest.

Page 34

Consistent with its telegrams of May 5, 1913, the Soviet Government did not take official cognizance of the award. It gave, an indirect answer through the official press. On September 4 (3?) *Izvestia* said that the "two gentlemen playing at arbitrat not even deem it necessary to inform the Soviet Government of the exact time and place where the tribunal assembled; th comedy was now ended and that the decision cannot bind the Soviet Government.⁸ (This objection was not reiterated by t Government or its legal advisers; as a matter of fact, it was manifestly unfounded as the Government had been notified of t hearing and of the tribunal's decision to go ahead over the Government's protest. As the Government persisted in its view t tribunal had ceased to exist, there was no use in further notification.)

A few days later, *Pravda* brought forward heavier cannon.⁹ It blamed the English press for having lost its traditional sense by taking the award seriously.

One might applaud such a game [as played by the arbitrators, A.N.] if it were played well at a Soviet circus or music hall, but the Moscow circus has already a famous learned pig able to play with figures no more clumsily than Scott and Stutzer, but it is a good honest pig and certainly costs the circus less than the circus buffoonery costs the Lena Company.

The legal point made here, namely, that the amount awarded to Lena was extravagant, will be discussed later.

As the Soviet Government refrained from formal statements, numerous interpellations on the Lena affair were addressed to English Government in the House of Commons; for a considerable period the interpellations followed each other weekly or t weekly.¹⁰ Finally, the English Government took the matter up with the Soviet Government. On March 13, 1933, Prime Min Baldwin circulated the following statement in the House of Commons: ¹¹

The arbitration court awarded the company compensation to the amount of some 13,000,000 pounds; but this award was ignored by the Soviet Government, and after a delay of two months his Majesty's Government were obliged to ask the latter how they proposed to implement it. The Soviet Government replied that, as they had already stated, they did not regard the arbitration court as competent; but the Chief Concessions Committee in Moscow, with whom the company's contract had been signed, finally suggested that they should meet

representatives of the company in Berlin with a view to arriving at a settlement of the case by

Page 35

direct negotiation, on condition that the arbitral award was not mentioned.

These negotiations, however, which began in July, 1931, broke down in September of the same year, since the company's representatives, though willing, for the sake of an early and satisfactory settlement, to accept a great reduction in the amount of compensation awarded by the Arbitration Court, were unable to obtain from the Soviet representatives anything beyond a purely derisory offer of 800,000 pounds.

The company, then again applied for assistance from his Majesty's Government, and representations were accordingly made to the Soviet Government both through the Soviet Ambassador in London and through his Majesty's Ambassador in Moscow. The Soviet Government, however, still maintained that the matter was one for direct settlement between the company and the Chief Concessions Committee; and though they were warned that his Majesty's Government could not accept this point of view, and would be obliged, if no settlement were reached by other means, to claim from them the full amount of the arbitral award, it was nevertheless felt desirable, in order to explore every possibility of effecting an amicable settlement, to authorize his Majesty's ambassador at Moscow to discuss unofficially with the then President of the Chief Concessions Committee, M. Kameneff, the prospects of a settlement, at a sum of 3,500,000 pounds, representing approximately the proved capital losses of the company after taking into account all counter-claims put forward on behalf of the Committee.

Mr. Kameneff, however, refused even to submit to the Soviet Government any figure beyond 1,000,000 pounds, which was almost as derisory as the figure of 800,000 pounds offered in Berlin; and M. Litvinoff, the Commissar for Foreign Affairs, though urged both by his Majesty's Ambassador at Moscow and by the Secretary of State for Foreign Affairs at Geneva on July 21 last to make further efforts for a settlement, has refused to take any action.

One last opportunity of settling the case seemed to have arrived when the Soviet Ambassador in London represented last month that it would be unfortunate if public agitation on this question were to revive during the continuance of the present Anglo-Soviet commercial negotiations. My right hon. friend ¹² then informed his Excellency that it lay with the Soviet Government to prevent that danger by offering an early and satisfactory settlement, which would effectively contribute to that spirit of confidence in the relations between the two countries which it is the object of the negotiations to promote, and requested him to warn them that in default of an offer of such a settlement he would be obliged to make a public statement on the lines of that which I am now making.

Since, however, no such offer has been received from the Soviet Government, the situation necessarily reverts to that reached prior to the direct conversations between the company and the Chief Concessions Committee and the subsequent negotiations for a settlement without reference to the award; and the payment to be claimed is the full amount specified in the award - namely, 12,965,000 pounds.

Negotiations on a Trade Agreement with England - which was actually concluded on February 14, 1934 ¹³ - caused the Soviet Government to

Page 36

reopen discussions with Lena. On an intimation from the Soviets to the English Government,¹⁴ Lena sent representatives but the discussions, which lasted six weeks, failed again.¹⁵ The English Government, describing the attitude of the Soviets as "helpful", continued its efforts and on November 4, 1934, an agreement was reached under which the Soviet Government deeded the Company in settlement of the latter's claims, transferable and non-interest-bearing notes in the amount of £3,000,000 over twenty years in semi-annual installments due on each May 1 and November 1.¹⁶ The notes were honored until May, 1937, not afterwards.¹⁷ Even prior to the discontinuance of payments, the outcome of the dispute had proved fatal to the Company. In April, 1937, the paid-up capital of £4,238,310, scattered other several thousands of shareholders, was reduced to £21,825. after repayment of 8½d. on each pound share, 19s.3½d. being written off.

Proceeding now to an analysis of the case we find the first question to be that of the applicable law. There can be little doubt as to the legal consequences of a contract establishing a concession in Soviet territory and under control of the Soviet Government as determined by Soviet law. Counsel for Lena and, following him, the arbitral tribunal took the same view in so far as performance of the contract inside the U.S.S.R. was concerned, whereas in other respects the "general principles of law" as referred to by the famous Art. 38 of the Statute of the Permanent Court of International Justice should decide (Award, No. 22). In this writer's view such a splitting of applicable legal systems was not warranted; the "proper law" of the entire contract was Soviet. Still, there is need to elaborate this point, as the Soviet Government did not invoke its own law. Nor was Soviet law referred to by the legal experts of the Government.¹⁸ In fact, such a reference would have been harmful to the Soviet cause. Soviet law, while generally narrowing the access to arbitration, strictly bars escape from arbitral engagements.¹⁹ It considers an arbitral

Page 37

arbitration tribunal once argued upon as "not established"²⁰ in the following four cases:²¹

- (a) if the time limit is allowed to lapse unused;
- (b) in the event of the refusal of one of the arbitrators to fulfill his duties or the rejection of an arbitrator by a party (Award, No. 22);
- (c) if, during the proceedings, a fact becomes known which justifies the criminal prosecution of one of the disputing parties, if such fact is of influence upon the settlement of the dispute;
- (d) in the event of the death of one of the disputing parties.

According to Art. 7 as referred under (b), a party may withdraw from the arbitration agreement, if he can prove that an arbitrator is not interested in the result of the proceedings and that this fact was unknown to him at the time when the agreement was made. From this exception, "the parties to an arbitration agreement may not withdraw from such agreement before expiration of the time limit. Fixed therein, except in such cases as are indicated in Article 7 of this regulation."²² Manifestly the course followed by the Government in the Lena case is incompatible with the prescriptions of Soviet law.

However, the Government, by not invoking any definite legal system, probably envisaged the general principles of law which, as mentioned, were also contemplated by the arbitral tribunal. Ascertainment of those principles is made easier by the fact that few legal subjects have received a comparative treatment as comprehensive as has arbitration.²³ On this basis it can be said that neither in case of arbitration nor in legal

Page 38

writing has it ever been asserted—much less proved—that an arbitration agreement loses its force if one of the parties (as all done by Lena) rescinds²⁴ the underlying contract. What has been asserted is only that if the underlying contract is void *ab initio* then the attached arbitration agreement likewise breaks down so as to leave no legal basis for an arbitral procedure. The latter proposition, which is questionable,²⁵ we need not discuss. Breach of contract, whether it amounts to rescission or not, is not the proper and main object of arbitration. Had Lena committed a breach, it was for the Government to sue Lena before the arbitral tribunal for damages or other reparations. Far from destroying the competence of the tribunal, Lena's alleged one-sided act of rescission would have created another ground of competence.

The action of the Soviet Government has been defended by S. A. Bernstein, a Soviet economist, in a short pamphlet, "The Social and Economic Results of the Working of the Lena Goldfields Co., Ltd." (London, 1931). He contends that Lena lacked "real legal foundation" for its undertaking. With the legal aspects of the case he is not concerned—the arbitral proceeding is not even referred to by him—; in fact, his statements lack legal relevancy throughout.

Fresh information of a legal character in support of the Government's action has more recently been furnished in an article published in 1945 by the *Columbia Law Review*.²⁶ There it is asserted that the withdrawal of the Soviet Government from the proceeding (telegram of May 5, 1930) was the answer to a communication just received from Lena, according to which the Company under the circumstances declined responsibility for the concession property, was recalling its engineers, and was cancelling the power of attorney of its representatives. While this is virtually in accord with the Award (No. 10), a new legal point is raised by a reference to section 86 [para] 1 of the concession contract which prescribed: "The concession shall only be terminated before its time by the decision of the arbitration court" (the time agreed upon was 30 or 50 years for the various rights granted; *cf.* Award, No. 8). The Government; we are told by the commen-

Page 39

tator, took the view that Lena had violated Section 86 [para] 1 and thereby destroyed the arbitration agreement. The reference to section 86 [para] 1 implies that the Government's defense was based not only on general principles of law, but also on the terms of the contract. However, section 86 [para] 1 has nothing to do with the question before us. It imposes an obligation *exclusive of Government*, namely, the obligation not to use its sovereign power of revoking the concession during the contract period, and the termination of the concession being reserved to the tribunal. The assertion that the *Company* had prematurely "terminated" the concession is preposterous, and, as far as the record goes, was actually not used by the Government. And it has been shown that a violation, if any, would have merely created a cause of action before the arbitral tribunal. Still the new version as given in the Columbia article seems to envisage another point. According to the award, Lena had raised its claim for an arbitral decision before the tribunal on February 26, 1930. These claims, we know, were for compensation on the ground that the Government had made it impossible for Lena to perform its obligations and to enjoy its right under the concession. The Government, in its answer of February 25, 1930, agreed without qualification to the submission of these claims to arbitration, itself setting forth further issues by way of a defense and a counterclaim (Award, No. 8). Moreover, it appointed Dr. Chlenow as its arbitrator, agreed upon Professor Stutzer as the Chairman, and requested him to fix the hearing, for May 9, 1930. These measures of the Government amounted to a binding, that is, irrevocable, admission of the tribunal's competence with regard to Lena's claims made known to the Government. The new version set forth by the commentator suggests that before the Government's change of attitude (on May 5, 1930) something "new" had happened which justified that change, and that the new event was Lena's "communication." However, the recalling of the Lena engineers and the cancellation of the powers of attorney were nothing but the necessary consequence and the confirmation of the stand previously taken by Lena, viz., that the Government had made it impossible for the Company to perform its obligations and to enjoy its rights under the concession agreement. The situation remained after the communication to all intents and purposes the same as before. The new version proves but one thing: its author felt that the change in the Government's attitude needed justification. He has tried to furnish that justification, but has signally failed.

The commentator further reports that the legal experts of the Soviet Government, Prof. A. J. Pergament and V.N. Shreter, an adviser to the Supreme Economic Council, had pointed out:

Page 40

(1) that the contract provided for the arbitration only of disputes concerning its "interpretation or execution" and not of disputes relating to its "suspension or annulment";

(2) that if it had been contemplated that the arbitrators were to pass on questions which did not pertain to performance of the contract, but which involved solely the assessment of the amount due as compensation for loss resulting from suspension of the contract, the parties would scarcely have chosen, as they did, an eminent geologist as an umpire, but would probably have selected a more appropriate specialist;

(3) that, in any event, the arbitrators as a matter of law did not have capacity to determine the extent of their own competence.

None of these three defenses has actually been advanced by the Soviet Government as far as the record goes. They are all manifestly unfounded:

(1) Section 90 [para] 1 of the concession contract referred to arbitration "every kind of dispute and misunderstanding in regard to either the construing or the fulfilment of the contract." "Suspension" or "annulment" are temporary or final refusal of fulfilment and therefore undoubtedly fall under the broad arbitration clause. The theory of the experts is all the more puzzling as it was agreed (section 89) that "the parties base their relations with regard to this agreement on the principle of good will and good faith, and on a reasonable interpretation of the terms of the agreement."

(2) Under the agreement the Government had to nominate six members of the Freiberg Mining Academy (Bergakademie), and six members of the Royal High Technical School in Stockholm for the selection of a chairman. Hence from the beginning both parties wanted a mining expert to preside over a tribunal which they entrusted with the decision of questions definitely legal in character (Award, No. 8). Each party, or at least Lena, then appointed a lawyer as associate arbitrator.²⁷ Such a combination is proper and frequent in mining disputes. A mining expert was particularly suited for the determination of the damages in question. The whole argument is obscure and somewhat the impression of a desperate scrambling for pretexts of any kind.

(3) The third objection is more interesting. Arbitrators cannot help forming an opinion on their own competence and acting on it; otherwise they could not proceed at all. The real significance of the objection consists in the fact that the arbitrators' opinion regarding their competence is not necessarily binding upon the parties. Generally, in civil or commercial arbitration a dissension may turn to the ordinary law courts for a re-examination of the question of competence; the

court, if it approves of the dissent, will then annul the arbitral proceedings and the award *for excess of power*. That remedy available in the Lena case.²⁸ To this extent the situation was similar to a typical public-international-law arbitration between governments. There a government party, though it had submitted to the arbitration, might nevertheless decline recognition award rendered on the ground the arbitrators had exceeded their power.²⁹ However, what *legally* matters is the *reason* for the government objects to the assumption of competence by the arbitrators. One needs no legal experts to know that a government though lacking good reasons may defy an award with impunity. When the Soviet experts advanced, as an independent reason for rejecting the award, the incapacity of the arbitrators to determine their competence, they proclaimed in reality that "might makes right" To sum up: None of the many reasons which have been presented in vindication of the Soviets' withdrawal from the Lena arbitral proceedings is well founded or colorably acceptable.

The substantive laws aspects of the Lena case present much less legal interest.³⁰ Breach of contract and unjust enrichment of the Lena claims, have long been recognized as legitimate causes of action under the various systems of law, including international law. The Soviet Government itself has at no time formally refused to compensate Lena. As to the amount of compensation, English Government figured the actual loss suffered by Lena as £3,500,000.³¹ Though the tribunal had power to award additional damages for the cessation of gain (*lucrum cessans*), the amount awarded (£12,965,000) gives the impression of being disproportionately high.³² It is true that in the published text of the award the statements on the amount of damages are complete, but it is unlikely that familiarity with the missing sentences would lead to a different conclusion.

Footnotes

* See Contributors' Section, Masthead, page 95, for biographical data.

¹ The aversion of the U.S.S.R toward arbitration outside the commercial area is well known. See, e.g., TARACOUSIO, *THE SOVIET UNION AND INTERNATIONAL LAW* 295 (1935), and HUDSON, *INTERNATIONAL TRIBUNALS* 240 (1944). Arbitration of a political kind was envisaged by Art. XIV. of the treaty concluded in 1920 between the U.S.S.R. and Estonia, 11 *LEAGUE OF NATIONS TREATY SERIES* 30 ff (translation pp. 50 ff.). According to that provision, arbitrators take place in disputes "between citizens of the contracting parties," but also in "special questions between the two Governments." No actual arbitration between the two Governments occurred, however. The "special" questions mentioned in the treaty were not even defined, it seems, nor were the "compositio an duties" of the arbitral Commissions "fixed" by supervening conventions as intended by Art. XIV. There are some international agreements of the U.S.S.R. providing for commercial arbitration, but they remained a dead letter, cf. Nussbaum, *Treaties on Commercial Arbitration*, 56 *HARV. L. REV.* 219, 22 (1942). Arbitration clauses have appeared in commercial contracts between Soviet corporations and non-Soviet firms, but very little has been publicized. These arrangements, and except for the Lena Goldfields case, which however was not a purely commercial affair, there is no instance of a direct appeal to the U.S.S.R. Government, We are not concerned with Soviet courts styled arbitral tribunals. It may be mentioned, however, that American and English associations have declined even before the war, to place their members under jurisdiction of those tribunals as required by the commercial agencies of the U.S.S.R. for business transactions, *FTC REPORT ON INTERNATIONAL ELECTRICAL EQUIPMENT*, No. 80, 1948.

² See, e.g. SCHWARZENBERGER, *INTERNATIONAL LAW* 215 (1945) ; JESSUP, *A MODERN LAW OF NATIONS* 33 (1948) ; Rashba, *Settlement of Disputes in Commercial Dealings With the Soviet Union*, 45 *COL. L. REV.* 539 (1945). A brief summary was included in LAUTERPACHT, *ANNUAL DIGEST OF INTERNATIONAL LAW CASES* 426 (1929-1930). See *infra* n. 30.

³ Our account follows, on the whole, the statements in the published award. The objections of the Soviet Government and of writers favorable to it have not been directed against the accuracy of these statements, but against their interpretation on the part of the arbitrators. On the persons of the arbitrators see *infra* p. 33.

⁴ *The Times* (London), Sept. 3, 1930, p. 13, col. 2.

⁵ According to the award (No. 21g), there was in the ensuing trial no evidence that Lena's employees had been guilty of any espionage or other disloyalty to the Government.

⁶ The general background of the measures against Lena Goldfields has been discussed by Cleona Lewis in her careful study, LEWIS, *THE UNITED STATES AND FOREIGN INVESTMENT PROBLEMS* 150 (1948). According to this study, under the N.E.P. as inaugurated by Lenin foreign capitalists were urgently invited to develop various branches of the Russian economy. As late as Sept. 1928 the Government was continuing its efforts to attract foreign capital, but a serious depression was already in prospect. Before the end of the year some foreign concessionaires were facing government charges of non-fulfillment of contract and period of confiscation was soon under way. Of 59 foreign enterprises operating in U.S.S.R. late in 1928, none was left at the outbreak of World War I. Lewis adds that "among the companies taken over were the famous Lena Goldfields and 5 other British enterprises, a German agricultural concession in which the German Government had a large investment, and a flourishing Austrian textile mill (B. Altman)."

⁷ *The Times* reported throughout August currently on these hearings, Cf. Official Index of *The Times* for July to September 1930, sub "Lena Goldfields."

⁸ *The Times*, Sept. 5, 1930, p. 12, col. 2.

⁹ *The Times*, Sept. 12, 1930, p. 11, col. 4.

¹⁰ Cf. Official Indices of *The Times* for the period from November 1930 to March 1933, under "Lena Goldfields, Ltd."

¹¹ *The Times*, March 14, 1933, p. 8, col. 3.

¹² Sir John Simon, the Foreign Secretary.

¹³ *TREATY SERIES*, NO. 11 (England 1934).

¹⁴ Statement by Mr. Colville, Secretary to the Overseas Trade Department, in the House of Commons on Jan. 28, 1934. 285 *H. C. DEB.* 39 (5th Ser. 1934).

¹⁵ Interpellation by Sir W. Davison and others of June 4, 1934. 290 *H. C. DEB.* 547 (5th Ser. 1934).

¹⁶ *The Times*, Nov. 6, 1934, p. 13, col. 1.

¹⁷ For the preceding statements, See *STOCK EXCHANGE OFFICIAL YEARBOOK* 2905 (England 1948). In the same Yearbook for 1949 the Company is mentioned.

¹⁸ *Infra*, p. 39.

¹⁹ In 1 *INTERNATIONAL YEARBOOK ON CIVIL AND COMMERCIAL ARBITRATION* 145 (Eng. tr., Nussbaum. ed. 1928; German orig. 1926), Professor Kelmman, Kiev, has given a fully documented account of "Arbitration under Soviet Law." White legislative regulation of the subject is left to the several republics, the representative enactment (and apparently the only elaborate one.) was the Arbitration Statute of the R.S.F.S.R. of Oct. 14, 1924, 1 *II CIV. & COMM. ARB.*: 224 (English tr., Nussbaum ed. 1928). Prof. Kelmman, a Ukrainian, therefore bases his account on the Russian rather than on the

regulation, which incidentally does not materially differ from the Russian. The strict attitude of Soviet law in matters of arbitration is in accord with French tradition. Cf. 2 LEHR, *ELÉMENTS DU DROIT CIVIL RUSSE* 303 (1890).

20 This is the term employed in both the Russian and the Ukrainian statute. 1 INT. Y. B. CIV. & COMM. ARB. 225, 229 (Eng. tr. Nussbaum ed. 1928). Apparently the Government, by declaring that the arbitral tribunal had "ceased to function", leans on that statutory language. Generally, the same is done by such phrases as invalidity (or nullity) of the arbitration agreement or the award.

21 R.S.F.S.R. arbitration statute Art. 12, 1 INT. Y. B. CIV. & COMM. ARB. 225 (Eng. tr., Nussbaum ed. 1928)

22 R.S.F.S.R. arbitration statute Art. 10 and 7. 1 INT. Y. B. CIV. & COMM. ARB. 225 (Eng. tr., Nussbaum ed. 1928)

23 By the numerous articles, contributed by experts from the countries concerned, published in INT. Y. B. CIV. & COMM. ARB. (Monographs and Articles point are listed or reviewed therein) and by publication of the *Institute International de Rome pour l'Unification du Droit Privé*, DAVID, *RAPPORT SUR L'ARBITRAGE CONVENTIONNEL EN DROIT PRIVÉ; Étude en Droit Comparé* (1932). See also Cohn, *Commercial Arbitration and the Rules of Law*, A C Study, 4 U. OF TORONTO L. J. 1 (1941)

24 The Soviet Government used the term "dissolution." That word is ordinarily employed for termination by way of agreement.

25 It has been examined, by way of comparative analysis, in Nussbaum, *The Separability Doctrine in American and Foreign Arbitration*, 17 N. Y. U. L. REV. 103 (1940).

26 Rashba, *Settlement of Disputes in Commercial Dealings With the Soviet Union*, 45 COL. L. REV. 530, 539 (1945). On p. 539, n. 42 it is stated that the author relies on a selection of documents concerning the *Lena* case "edited in Moscow in 1930 and then circulated by the Central Concessions Commission U.S.S.R." Data on publication are not given.

27 Dr. Chlenow's profession is not mentioned in the material available, but most probably he too was a lawyer.

28 The question of whether in the *Lena* case the English courts would have had jurisdiction under the Arbitration Act, 1889, 52 and 53 Vict. c. 49, 196, is too academic to warrant discussion.

29 See, e.g., OPPENHEIM, *INTERNATIONAL LAW* 16 (6th ed., Lauterpacht, 1940).

30 The brief summary in Lauterpacht's *Digest*, supra n. 2, is only concerned with the substantive-law aspects. The arbitration problems involved are not hinted at.

31 Cf. the statement of the Balfour Cabinet, supra p. and Award, No. 29.

32 The amount awarded was criticized by Lord Marley (Labour Party) in the House of Lords, Nov. 1, 1932: 85 H.L. DEB. 950 (5th Ser. 1932).

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