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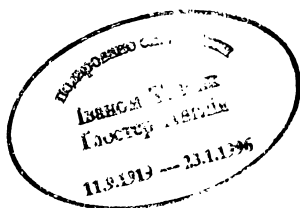
**THE STATUS OF THE UKRAINIAN SSR
IN VIEW
OF STATE AND INTERNATIONAL LAW**

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THE STATUS OF THE UKRAINIAN SSR IN VIEW OF STATE AND INTERNATIONAL LAW

1. Basic Information

The concept of state is complicated and many-sided. A state can be analyzed in the sphere of law and sociology and in the static and dynamic aspects, both in the inter-relation of the three basic components of each state and in relations of one state with other single states, or with various international organizations, alliances or blocs. The analysis of the state's internal components and their inter-relations, state order and the activities of state government, as representative of the will of state, is a branch of state, or so-called constitutional law. All activity of state organs with respect to the outside world, and which is very often the result of treaties or power aspects, is examined from the position of interstate, or so-called international law, or rather customs and "precedents" for international law so far does not exist in a form of some generally accepted "code" of legal norms. Both fields — state and international law — although bound with each other, in some cases are completely deviant in their appraisal of various phenomena in real life (for example, the use of force to achieve a certain aim).

The classical definition of a state, which so far has not lost its actuality, is that a state is the most highly organized form of human societies, which live on a given territory and are subject to one supreme power (state government), which in its activity has complete internal and external sovereignty. A lack of any of the three elements (territory, population, sovereign power), or inferiority of substance which is usually placed on them arouses doubts or even contradicts the very existence of the state, regardless of the fact whether a given human society or territorial entity is recognized as a "state" by other states or not.

When dealing with the first element — *population* — then in the past the people were content with the very existence of the population which inhabits a particular territory and were usually not interested (in particular lawyers) with analysis of the make-up of this population, its social structure, or its relationship to state government. The

development of sociology and various auxiliary sciences (for example, demography, statistics, ethnography, group dynamics, etc.) have made depth analysis of various strata of the population possible, their dynamics in community and state life, their influence on state government and state order (this gave the name to various state forms, as for instance, theocracy, monarchy, oligarchy, plutocracy, democracy, or finally the newest form — the monoparty state, i.e. unlimited rule by one party), and even the reason for the very existence of the state (the well-known expression by Louis XIV "I am the state", or the state as an end in itself, or finally the state as a means to an end, which is an all-round social, economic and cultural development of the entire population).

The question of territory, the second element of any state, is basically a matter of a *de facto* state and the play of power elements, rather than juridical discussions, with the exception perhaps of the so-called dependent territories, of which there are fewer all the time, or territories with mixed population. As we can see from the text below, however, the question as to *whom* does the *territory of the Ukrainian R. (read Russified) S. (read simulated) Republic* belong, to this "republic" or to the "Union of Soviet Socialist Republics" raises arguments even among the Soviet jurists.

The third element — *state government* — (or as often defined "power") calls forth most disputes among experts of both state and international law, in particular when the subject of internal and external independence of various governments is involved. The matter of independence is identified by some with the subject of so-called sovereignty, while the question whether sovereignty is an indispensable sign of any state or whether it is not such a sign has been disputed for a long time. This controversy is far from being settled primarily because so far there is neither a generally accepted definition of the concept of "sovereignty" itself, nor a general agreement as to who is the actual bearer of this sovereignty (e.g. the monarch, various social classes, the nation as a whole or its elected representatives, the monoparty, or finally the state itself, as a juridical person). And when it is taken into consideration that between complete internal and external independence, and full dependence on other factors there is a whole range of transient situations, that is various degrees of dependence (the so-called state of "limited sovereignty"), which gives scholars the basis to classify various states as genuine (sovereign), vassal (or more modern "satellites"), actual and disguised protectorates, client states, or even fictional states¹, then it is clear that analysis of the third element is the most complicated.

¹) Short summaries of the above-mentioned classifications can be found in specialized encyclopedias, as well as on p. 29 of the work by Aspaturian, Vernon V., *The Union Republics in Soviet Diplomacy; a Study of Soviet Federalism in the Service of Soviet Foreign Policy*. Geneva, Droz—Paris, Minard, 1960.

The state becomes the subject of interstate or international law essentially through its recognition by other states, at a time when it is necessary to keep in mind the differences between *the recognition of the state* and *the recognition of the government* as well as the *de facto* recognition (by way of any direct contacts by authorized representatives) and the *de jure* recognition. Other states have no obligation to recognize either new states or new governments of existing states, and in the matter of recognition are guided exclusively by their own interests. The question whether such recognition has constitutive (creative) or only declarative value, as well as the question of so-called "collective recognition" by way of permitting some state to participate in international agreements or organizations are also controversial among scholars. In practice, states systematically reject the principle of collective recognition, as was among other things explained in the memorandum of the UN General Secretariat of March 5, 1950, to which we are going to refer below.

2. The Emergence of the U.N.R. and the Ukr. S.S.R. — Two States Simultaneously?!

Analyzing the first three-year period of the existence of the modern Ukrainian state 1917-20, we must first of all resolve the question of whether *two states* can exist on the same territory at the same time, or only and exclusively *one*. Ignoring this basic question one can arrive at such controversial conclusions as for example:

"...In the same way in the times of the Directory of the UNR... the Ukrainian state *existed effectively* and enjoyed the status of internationally legal subject *until the end of 1920*, i.e. until the removal of the government and the Army of UNR from Ukrainian territory".

And simultaneously:

"...Constitutionally *the Ukr. SSR was considered* an independent state from March 1918 until May 1920"² (ital. added).

So far in theory and practice the axiom is dominant that only one state can exist at the same time, and on the same territory. When after World War II two Germanies, two Koreas, two Chinas or two Vietnams were created, each of the states-twins received its own territory, which it governs and defends.

Resting on this axiom let us examine the situation in Ukraine between November 20, 1917 and November 21, 1920.

The state which was established by the Third Universal of the Central Council under the name of the "Ukrainian National Republic" was recognized by the then government (the Council of People's Commissars) of Soviet Russia by a well-known ultimatum, received in Kyiv on December 4(17), 1917, and signed by V. Ulyanov (Lenin),

²) *Entsyklopediya Ukraïnoznavstva*, Part 2 (Slogans), Vol. 4, p. 1572, lines 8-13 and 36-39 of left column.

as "head of the Soviet of People's Commissars" and L. Trotsky, as "People's Commissar of Foreign Affairs". This note, which is intentionally omitted or falsified in all Soviet sources and works of both historians and jurists, says among other things:

"...We, the Council of People's Commissars, *recognize the National Ukrainian Republic*, her right to separate from Russia completely or to reach an agreement with the Russian Republic as to federative or similar relations between them. Everything, which pertains to the national rights and national independence of the Ukrainian people is recognized by us, the Council of People's Commissars, immediately, *without restrictions and unconditionally...*" and further:

"...This uncertain policy (of the Ukr. Central Council), which deprives us of the opportunity to *recognize the Council* as a representative of the working and exploited masses of Ukraine..."³ (ital. added).

From the above-mentioned quotations it is clear beyond any doubt that the government of Soviet Russia:

1) *recognized* formally and without any conditions the newly created *state*, the Ukrainian National Republic, — and at the same time —

2) *refused to recognize* the *government* of that state, the Central Council, established by the will of the representatives of the people and acting effectively, then already planning to establish a rival, loyal government, which was accomplished (for the first time) a week later at the so-called First All-Ukrainian Congress of Soviets in Kharkiv, which was already occupied by the Bolshevik units.

When Russian historians and jurists maintain that the Ukr. SSR emerged on December 25, 1917, they not only intentionally falsify historical facts and documents, but also confuse two concepts — "state" and "government". The regional congress of Soviets in Kharkiv, which was joined by several delegates of the real congress of representatives of Councils, which took place in the middle of December in Kyiv, called to life the government rivalling the Ukrainian Central Council, but did not create any state, and in particular did not determine the territory of this fictitious state, because at that time Bolshevik organizations of southern and eastern oblasts of Ukraine established various "Soviet republics" (e.g. the Donets-Kryvyi Rih, the Odessa, the Crimea and so forth), on the territory, which — according to the text of the Third Universal — constituted the territory of the Ukrainian National Republic.

It must be remembered that during 1918 the government of Soviet Russia:

a) *recognized* the independent Ukrainian state and its government *twice*, namely, during peace negotiations in Brest-Litovsk in a statement by Trotsky, made on January 10th when the delegations'

³) Dmytro Doroshenko, *Istoriya Ukraïny 1917-1923*, Vol. 1, p. 214.

credentials were examined, and in the peace treaty reached in Kyiv on June 12, 1918 between the Russian Socialist Federative Republic on the one hand and the Ukrainian (Hetman) State on the other;

b) after concluding a peace treaty in Brest-Litovsk it ordered the *self-liquidation* of the recently created *Soviet government in Ukraine*, which took place in Tahanrih, on April 16-18, 1918.

And in the resolutions of the First (founding) Congress of the so-called Communist Party of the Bolsheviks of Ukraine (CPBU), which took place on July 5-12, 1918 in Moscow, we can read the following among other things:

“...Taking into consideration that —

(3) the existence of the People's Secretariat, as the center of Soviet government, in conditions where the Soviets as organs of local government are absent, is a *harmful fiction*, which leads to the self-deception of the masses... The Congress resolved:

1) To declare the People's Secretariat dissolved”⁴.

*

Getting ready for the second aggression against the Ukrainian National Republic, Stalin (then Commissar for Questions of Nationalities), — executing Lenin's instructions to create regional “provisional Soviet governments” at the heels of the advancing army with the aim “of taking away from the chauvinists of Ukraine, Lithuania, Latvia, Estonia the possibility of regarding the advance of our detachments as occupation...”⁵ appointed, (in the railroad car near Kursk), the puppet “Provisional Workers and Peasants Government of Ukraine” consisting of the following men: Voroshilov, Sergeev (Artem), Averin, Zatonskyi and Yurko Kotsyubynskyi. The first “state acts” of this new quisling “government of the Ukr. SSR” included:

a) a declaration (of January 25, 1919) “on the necessity of the union of Soviet Ukraine with Soviet Russia on the basis of a socialist federation” (what a glaring negation of the Fourth Universal of the Ukrainian Central Council!), and

b) a proclamation “to all peoples of the world” (of February 26, 1919) with the call to recognize this government and to establish diplomatic relations with it.

Even the Directory of the UNR, which from January 9, 1919 was in a state of war (not only *de-facto*, but also formally-legally) both with the Russian Soviet Republic and with all “its political and military agents on the territory of Ukraine”⁶ received (at the beginning of

4) “The Communist Party of Ukraine in resolutions and decisions of congresses and conferences”, Kyiv, 1958, pp. 7 & 8.

5) Lenin's telegram to the C.-in-C. of the Red Army, Vacetis, of November 29, 1918, which was kept secret until 1942, published in the 4th Edition of *Lenin's Works*, Vol. 28, p. 225 and in the English edition, Vol. 28, p. 225.

6) According to the text of the Directory's ultimatum of January 2, 1919 as quoted in *Zamitky i materiyaly do istorii Ukraïns'koi revolyutsii*, by Pavlo Khrystyuk, Vol. 4, pp. 37-38.

March 1919) a telegram from Moscow, signed by the then Commissar of Foreign Affairs Chicherin, and another from Kharkiv, signed by Khristian Rakovsky⁷ on the subject of negotiations between the "Ukrainian Soviet government" and the Directory "under conditions of recognition by the Directory of the worker-peasant government of Ukraine"⁸.

This unsuccessful attempt to liquidate the Directory and the democratic order of the UNR with the help of diplomacy (regardless of military aggression) proves that in early 1919 the Bolsheviks themselves were conscious of the existence of *a single state* — the Ukrainian National Republic, and not the Ukr. SSR⁹.

Some researchers link the formal beginning of the Ukr. SSR with the ratification of the first so-called constitution in mid-March 1919, forgetting the fact that — a) the ratification of a constitution is in no way a state-creating act in light of knowledge about the state (England for example still does not have a written and formally ratified constitution); b) the existence of a single state, the Ukrainian National Republic, which at that time was already recognized by other foreign states, excludes the right to establish another state at the same time and on the same territory in the form of the Ukr. SSR.

Furthermore this "constitution of the Ukr. SSR" was only a carbon copy of the constitution of the Russian Soviet Republic in accordance with the decision of the Third Congress of the CPBU, which was held on March 1-6, 1919 in Kharkiv and was unreal in view of the principle of effectiveness, in as much as the state order elaborated in it was not the only normalizing and permanently acting one on the territory, for the domination of which a war was being waged. And the effectiveness of the supreme power (the Congress of Soviets, or rather the All-Ukrainian Central Executive Committee, according to the articles of the constitution) is best illustrated by the fact that on June 1, 1919 — "The All-Russian Central Executive Committee... adopted a decree on the "Unification of the Soviet Socialist Republics: Russia, Ukraine, Latvia, Lithuania, Byelorussia... in which it was mentioned (or rather ordered, — W. S.) "to put into effect close consolidation of: 1) military organization and military command, 2) the councils of national economy, 3) railroad administration and agriculture, 4) finances, 5) the commissariats of labour... on the

⁷) Khristian Rakovsky, partly Bulgarian and partly Rumanian, was the then head of the "Provisional Government" and Commissar of Foreign Affairs, in spite of the fact that only a few months earlier (June 12, 1918) he signed the peace treaty in Kyiv as an authorized representative of the Russian SFSR.

⁸) I. Mazepa, *Ukraina v ohni i buri revoliutsii*, Part 1, p. 103.

⁹) "Istoriya derzhavy i prava Ukraïns'koï RSR (1917-1960)", published by the Academy of Sciences of the Ukr. SSR, Kyiv, 1961; — on page 1967 in Note 3 we read literally the following: "Soviet Ukraine officially began to call itself Ukrainian Soviet Socialist Republic on December 6, 1919. Prior to this it was called *Ukrainian National Republic*".

condition that direction of various branches of national life will be centred in the hands of sole boards"¹⁰.

The Soviet author himself admits that this decree was "formally a legislative act of the RSFSR", but — he adds — "it was essentially an agreement between independent Soviet states about a military alliance"¹¹.

When as the result of the victorious march of the united Ukrainian armies on Kyïv-Odessa and the actions of guerrilla detachments the occupation army of Soviet Russia was forced to leave all Ukrainian lands in the summer-autumn of 1919, this fictitious "state", which appeared under the cover of the Ukr. SSR (if one were to allow even for a moment the juridically inadmissible thesis that it emerged in March 1919 as the result of the ratification of the constitution) lost two basic elements of statehood — territory and population. And when at the beginning of October 1919 both "the Soviet government of Ukraine" and the Central Committee of the Communist Party of the Bolsheviks of Ukraine again self-liquidated themselves, upon orders from Moscow of course¹², it also lost the third component of each state.

As can be seen from this brief survey of facts and documents, one cannot seriously speak about the existence of a "state" such as the Ukr. SSR in 1917-1919 without denying, at the same time, the existence of the Ukrainian National Republic, or the Ukrainian State (in Hetman's time) in general, which at that time was recognized "de jure" and "de facto" by various European states. One can speak about attempts by Russia and her henchmen in Ukraine to impose upon the Ukrainian National Republic, by way of a two-fold armed aggression and diplomatic measures, a puppet "government" (which was not recognized by anyone) and "Soviet order", which was rejected by the overwhelming majority of the population of Ukraine.

*

Preparing for the third in a series of aggressions against "agricultural" Ukraine, an "All-Ukrainian Revolutionary Committee", not a "government", was set up in Moscow (Dec. 11, 1919) with Hryhoriy I. Petrovskyi at the head, "to facilitate the operation of the Red Army..." as the Bolsheviks themselves cynically admitted in an appeal of February 21, 1920, which was published in the *Izvestia* (Newsletter) of the All-Ukrainian Central Executive Committee and the Kharkiv

¹⁰ & ¹¹) *ibid.*, pp. 62-3.

¹²) a) Pipes, Richard, *The Formation of the Soviet Union: Communism and Nationalism, 1917-1923*. Cambridge, Harvard University Press, Rev. Edition 1964, p. 144.

b) Borys, Jurij, *The Russian Communist Party and the Sovietization of Ukraine*. Stockholm, 1960, p. 235.

c) Sullivan, Robert S., *Soviet Politics and the Ukraine 1917-1957*. Columbia University Press, 1962, p. 52.

“gub-rev-kom” (Provincial Revolutionary Committee). After the 170-thousand-strong army of Yegorov again occupied part of Ukrainian territories in the late-1919 and early-1920 this same All-Ukrainian Revolutionary Committee issued a decree (January 27, 1920) “On the Consolidation of Activities of the Ukr. SSR and the RSFSR” declaring that all decrees and resolutions adopted until now, which pertain to the “consolidated” (by the above-mentioned decree of the All-Russian Central Executive Committee from June 1, 1919) branches of state life “are being annulled and are being replaced by the decrees of the Russian SFSR, which come into force in the whole territory of Ukraine...”¹³ This is what the “effectiveness” of the newly adopted “constitution” of allegedly “independent Ukr. SSR” looked like. What self-respecting state government would introduce to the territory which it does not even completely control, the legal norms of another state? Only an occupying power, no matter in what disguise it would appear, is abolishing the existing laws and introducing its own.

The All-Ukrainian Rev.-Com. self-liquidated itself on February 20, 1920, transferring its “mandate” to the “Council of People’s Commissars” created on that same day under the leadership of Khristian Rakovsky. Notifying “all peoples and governments of the world” about its birth this puppet “government” again invited all to “enter into economic and diplomatic relations with Ukraine...”, but this time too no state recognized this fictitious state or its “state government”.

What did the so-called Ukr. SSR represent in the light of the principle of effectiveness in the late-1919 and early-1920 could also be seen from the fact that the Army of the Ukrainian National Republic, which upon orders from the Directory, launched the so-called “winter offensive” and was active for six months (from Dec. 6, 1919 to May 6, 1920) on the Bolshevik-occupied territory and that the then acting Prime Minister of the UNR, Isaak P. Mazepa, was on this territory from mid-February 1920 until the end of the winter campaign, maintaining contacts both with the Army of the UNR as well as the population, which did not recognize “the government of the Soviets” at all¹⁴.

3. Succession of UNR — Ukr. SSR, or Ukraine’s Annexation by Russia?

In the autumn of 1920 the existence of the Ukrainian National Republic as a state became jeopardised after Poland, so far an ally

¹³) *Istoriya derzhavy i prava Ukraïns’koï RSR*, p. 175, 1964.

¹⁴) Ol. Dotsenko, *Zymovyi pokhid (6.XII.1919—6.V.1920)*. Warsaw, 1932, Works of the Ukrainian Scientific Institute, Vol. 13, as well as in the above-mentioned work by I. Mazepa: *Ukraina v ohni i buri revolutsii*, Part 2, Chapter XVIII.

of the UNR, broke the provisions of the so-called Warsaw Treaty of April 21, 1920, and entered into separate negotiations with Soviet Russia in connection with the so-called "Polish-Soviet" war of 1920. During peace negotiations (Sept.-Oct. 1920 in Riga) the Russians included in their delegation Dmytro Z. Manuïlskyi and Emanuil I. Kvirring as representatives of the "Ukrainian SSR" and got the head of the Polish delegation, Jan Domb'ski, to recognize the mandates of these "representatives" of the "Ukrainian SSR" as valid, at the first session (September 21, 1920), set aside for the checking of credentials¹⁵. The Bolsheviks repeated at Riga the same trick which they once attempted to use in Brest-Litovsk (January, 1918); in Brest they failed but in Riga they managed to put the trick over and the so-far fictitious state in the form of the Ukr. SSR won recognition by the first foreign state. The preliminary peace treaty between Poland and the Russian SFSR and Ukrainian SSR was signed on October 12th and ratified in Moscow (October 20th), in Kharkiv (October 21st) and in Warsaw (October 22nd), and the final so-called Riga Peace Treaty was concluded on March 18, 1921.

The transfer of the government and the army of the UNR beyond the Zbruch on November 20-21, 1920, to the territory which according to the provisions of the Riga treaty was awarded to Poland, must be considered, from the legal point of view, as the end of the Ukrainian independent state, since that state lost two basic elements — territory and population.

Trying to find an answer to the question whether the Ukrainian state as such ceased to exist or not, some of our researchers have put forth a theory of so-called "continuity and succession" as follows:

"In spite of the change of governments and regimes in Ukraine from 1917 the continuity and succession of the Ukrainian state exists in the legal sense: UNR — Ukr. State — UNR — Ukr. SSR, documented in various constitutional and internationally legal acts..."¹⁶

This theory, regrettably, does not take into consideration the following very basic legal and historical moments:

1) The Ukrainian state went from federative ties with Russia (in the Third Universal) to full independence, which it never renounced, — (the proof of which is, among other things, a revolt against Hetman Skoropadskyi after the latter's proclamation by a writ of November 14, 1918 of a federation with the non-existent Russian non-Bolshevik state) at a time when the Ukrainian SSR, even when one conditionally

¹⁵) V. Kedrovskyi, *Ryzhs'ke Andrusovo*, Reminiscences about the Russo-Polish peace negotiations in 1920, Winnipeg, Man. 1936; p. 18. The author who is still living in the USA, had been the Consul of the UNR in Riga and an eye-witness of the events which he is describing. He emphasizes that the head of the Polish delegation, Jan Domb'ski, is the same one who signed the treaty with the government of the UNR in April 1920.

¹⁶) *Entsyklopediya Ukraïnoznavstva*, Vol. 4, p. 1573, lines 5-11, right col.

accepts that such a "state" really emerged (when?!), never went beyond the status of a "federative republic". This status was constantly stressed and underlined in official documents of various "Soviet governments", but was unacceptable even to such Ukrainian Communists, as for instance Vasyl Shakhrai, who was one of the "delegates of the Ukr. SSR at peace negotiations at Brest-Litovsk"¹⁷. What kind of "continuity and succession" can exist between "an independent, on no one dependent, free sovereign state of the Ukrainian people" (the words of the Fourth Universal), and a quasi-state which annulled its own laws and regulations and renouncing authority over the major branches of state life proclaimed as true and binding the decrees and resolutions of another state, the Russian SFSR "on the whole territory of Ukraine"?!

This is not only "a change of government and regime" (as for instance the UNR and the Ukrainian State of the Hetman period), but — in view of state and international law — something much more essential: a substitution of "federation" for independence and a transition from the state of genuine statehood into the state of a "satellite", or even worse, fictitious statehood (as for instance the "Protectorate of Czechia and Moravia").

2) The legal *state of war* which began to exist in the second half of December 1917 and was renewed at the beginning of January 1919 between the Ukrainian National Republic and Soviet Russia and "her political and military agents on the territory of Ukraine" (see above-mentioned ultimatums) was not *legally* liquidated to this day by any peace agreement. Can one then speak about "continuity and succession" between two warring sides? Is it not simpler and more logical to describe the state of affairs which took shape in Ukraine at the end of November 1920 and which continues to the present by a well-known legal term "annexation", which, as a matter of fact, was aptly defined by Lenin himself as:

"Under annexation or conquest of foreign lands, the government understands according to the legal consciousness of democracy in general and the working classes in particular, all incorporation in a large or powerful state of a small or weak nationality without an exact, clear and voluntary expression of agreement and wish by that nationality...

"If any nation is held within the boundaries of a said state by force, if, contrary to the desires expressed on its side — regardless whether this desire is expressed in the press, at popular meetings, in the decisions of the parties or disturbances and uprisings against national oppression — it is denied the right by free elections, *with complete withdrawal of troops by the annexing or generally stronger nation*, to decide without the

¹⁷ Serhiy Mazlakh and Vasyl Shakhrai, *Do khvyli*, Second edition, "Prolog" publishers, New York, 1967.

slightest duress the question about the forms of state existence of that nation, then *its incorporation is annexation*, that is conquest and coërcion"¹⁸.

In international law annexation is one of the admissible ways of acquiring territory of a foreign state, besides such formally legal methods as yielding by treaty (cession) or a court judgement (adjudication), in particular when other states agree to the annexation, albeit silently.

The UNR Directory, or any other government of independent Ukrainian state did not cede to Soviet Russia or her "political and military agents in Ukraine", that is "the government of the Ukr. SSR" the territory of Ukraine by any treaty; this territory was not awarded to the Russians by any international tribunal or the court of arbitration. Therefore only one logical deduction remains, that they gained this territory by way of annexation so clearly outlined above.

Have the annexing aggressors really "taken over" the rights and duties of UNR, that is of the independent state of the Ukrainian people effectively existing until November 21, 1920? — about this Soviet jurists and historians are silent. If we, in exile, are bringing up the theory of continuity and succession then we must prove the following by facts and documents: 1) when did this succession take place, 2) in what constitutional and internationally legal acts was it expressed, and finally 3) what are the similarities or differences between the UNR and the Ukr. SSR in the post-secession period.

4. The Role of the Communist Party of the Bolsheviks* Within the System of Soviet State Organization

While analyzing the Soviet state order "three aspects... must always be borne in mind", says Leonard Shapiro in his well-known work¹⁹: first, the *confusion of nomenclature*, second the importance of theory,

¹⁸) Decree "on peace" of the Second All-Russian Congress of Soviets of November 8, 1917, written by Lenin, now included in "The Works of V. I. Lenin", 4th Edition, Vol. 26. Here quoted according to *Ukrains'ka RSR na mizhnarodniy areni*. Compilation of documents (1917-1923). Published by "Scientific Thought", Kyiv, 1966, p. 6.

*) Although the word "Bolsheviks" was removed from the party's name at the 19th Party Congress in 1952 I shall continue to use this term not only in the strictly historical sense, but primarily because "Bolshevism" as a typically Russian phenomenon should not be mixed up with Communism of other nations or states. This difference was already pointed out by various researchers, even Russian (Berdyayev), and this ever deeper difference between Russian "Bolshevism" and Yugoslav, Czech, Rumanian, Chinese, etc. Communism is now becoming apparent in the setting of so-called "polycentrism", or more precisely demoralization among the Communist parties, both in Communist states and in parties which are not in the government.

¹⁹) Shapiro, Leonard, *The Government and Politics of the Soviet Union*. Random House, New York 1965; revised edition Vintage Book (paperback) 1967, p. 12. (Italics added — W. S.)

and finally, the specifics of historical development of the Soviet system of state. As examples of this confusion of nomenclature he cites i.a. the "Communist Party" and "elections" in the USSR and says:

"Traditionally and etymologically a 'party' is one of several groups contending for a share of power in the state. In Soviet usage the term is applied to one group, which... exercises a virtual *monopoly of power* and is... doctrinally considered to be entitled to this monopoly"¹⁹.

Despite the fact that all serious students of the Soviet state system thoroughly analyze the role and the task of the party and mutual ties between the state and party organs and individuals at all echelons of government, the authors and adherents of the so-called statehood theory of the Ukr. SSR among the Ukrainian emigré scholars are consistently keeping silent about this aspect in their argumentation, as if they did not see that in the Soviet state system the party is the actual holder of power ("the sovereign" — as was said by another student²⁰ in his work) and the unifyingly centralistic force which acts according to the principles of "the dictatorship of the proletariat", "the government by the Soviets" and the so-called federative state order of the USSR.

While examining the state status of the Ukr. SSR from the point of view of state law, it is in no way possible therefore to bypass or to keep silent about the problem of the functional relationship of state and party organs in this "Union Republic" because:

1) the dominant role of the Communist Party of the Bolsheviks is clearly defined in Article 126 of the USSR Constitution (which corresponds to Article 106 of the Ukr. SSR Constitution), by a categorical assertion that this party... "constitutes the *leading nucleus of all organizations of the workers, both civic and state...*";

2) throughout the USSR, although it is allegedly built on the "federative" principle, there exists and acts only a single "Communist Party of the Soviet Union", — in contrast to Yugoslavia for example, where separate national parties exist in each of the component parts of the federation, or even to Czecho-Slovakia, where a separate Czech and a separate Slovak Communist party exists;

3) the so-called Communist Party of Ukraine (CPU) from its very beginning was and is only a provincial cell of the CPSU, (which in 1918-1925 was called "The Russian Communist Party of the Bolsheviks" (RCPB), and between 1925 and 1952 "The All-Union Communist Party of the Bolsheviks"), a cell which is wholly subordinate to the leading organs of the Russian, or the "All-Union" party.

The leadership of the RCPB although it agreed — under pressure of circumstances and from tactical considerations, — to tolerate national republics which rose on the ruins of the Romanov empire,

²⁰) Meyer, Alfred G., *The Soviet Political System; An Interpretation*. Random House, New York, 1965, p. 113.

took great pains not to allow the reconstruction of the party along federative lines. This became apparent for the first time in attempts to establish a Ukrainian party formally independent from the RCPB and having equal rights with it, in the time of the so-called Tahanrih meeting of the Bolsheviks of Ukraine, which took place there on April 19-20, 1918, as well as during the First (founding) Congress of the CPBU, which was held on July 5-12, 1918 in Moscow. This is discussed in the works of I. Maistrenko and T. D. Bondar²¹.

The party meeting in Tahanrih, while discussing the question of "creation of an independent party of Communists-Bolsheviks of Ukraine" (point 2 of the day's agenda), which was tightly bound with the question of the party's name, the forms of ties with the RCPB, the leading organs, etc., revealed basic differences in its approach to the solution of the national question within the party. Three proposals as to the party's name were made which reflected three opposing points of view of the Bolsheviks of Ukraine, the so-called "Katerynoslavtsi" who felt that the CPBU should be an integral part of the RCPB, proposed the name the "Russian Communist Party in Ukraine", a group of Bolsheviks from the Poltava region with V. Shakhrai and H. Lapchynskyi at the head and a group of left-wing Ukrainian Social Democrats, who cooperated with the Bolsheviks and were present at the meeting proposed the name "Ukrainian Communist Party", while M. Skrypnyk proposed the name the "Communist Party of the Bolsheviks of Ukraine" and this name was adopted by the majority of votes. With respect to the form of ties between the CPBU and the RCPB, E. Kviring on behalf of the "Katerynoslavtsi" proposed: "to create an autonomous party with its central committee and its own congress, but subordinated to the general central committee and congresses of the Russian Communist Party", while M. Skrypnyk proposed to create "an independent Communist Party which would have its own central committee and its own party congresses and would be tied to the Russian Communist Party through an international committee (the Third International)". In a roll-call vote Skrypnyk's proposition was accepted by the majority of votes (35 against 21 and 1 abstention). This gives Maistrenko a basis to maintain that allegedly "beginning with the Tahanrih meeting of April 19-20 and up to the First Congress of the CPBU in Moscow in July 1918, a Bolshevik Party existed formally in Ukraine, independent from the RCPB and having equal rights with it, similarly to the Polish, Rumanian, German, or some other Communist Party independent from Russia or another country"²².

²¹) Ivan Maistrenko, *Storinky z istorii komunistychnoi partii Ukraïny*. Part I, "Prolog" Publishers 1967. Continuation in periodical *Sushasnist'*, Nos. 7/79 and 9/81 for 1967 and 3/87 and 12/96 for 1968. See pp. 47-57, Part I. Tykhon Danylovych Bondar, *Komunistychna partiya Ukraïny v period inozemnoi interventsii ta hromadyans'koï viyny*. Kyiv University Publishers, 1968, pp. 10-24 and 81-95.

²²) I. Maistrenko, *ibidem.*, p. 49.

The Soviet author, Tykhon Danylovych Bondar however maintains that Skrypnyk, Zatonskyi and others:

“...in a draft resolution tried: a) to give no grounds to dump upon the government of the RSFSR the responsibility for military actions in Ukraine; 2) to give no grounds to the Austro-Hungarian interventionists to break the peace of Brest; 3) to deprive the Ukrainian bourgeois nationalist counterrevolution of the opportunity to slander the Bolsheviks about the fact that allegedly the victory of the socialist revolution in Ukraine is ‘the deed of Moscow’s hands’, the RCPB, the Russian Communists, who have come to Ukraine”.

Further he claims that:

“...to explain the decision of the meeting about the ties of the CPBU with the RCPB through an international organization only by the influence in the CPBU of ‘leftist Communists’ and the separatism of Skrypnyk, as some historians are attempting to do, would be a violation of historic truth. To this the CC RCPB and V. I. Lenin had consented”²³.

Nevertheless, the First Congress of the CPBU which took place in two and a half months’ time in Moscow, adopted — in the question of ties between CPBU and RCPB — the point of view of the “Katerynoslavtsi” and transformed the CPBU into a provincial type organization subordinate to the RCPB. In the Congress’s resolution on this question it was stated:

“To unite the Communist party organizations of Ukraine into an autonomous, as to local questions, Communist Party of Ukraine with its own Central Committee and its own congresses, but which would be part of the single Russian Communist Party with subordination in the program questions to the general congresses of the Russian Communist Party, and in the general political questions to the CC RCPB”^{24a}.

At that same congress the tasks of the CPBU in the field of government relations between Ukraine and Russia were defined as follows:

“...to fight for *revolutionary unification* of Ukraine and Russia on the basis of proletarian centralism within the framework of the *Russian Soviet Socialist Republic*”^{24b}.

If one keeps in mind that “revolutionary”, i.e. forced “unification” is to take place on the basis of “proletarian centralism”, i.e. the well-known Russian “sole authority”, which means blind obedience to the orders and commissions of the central Party organs, and must lead to the incorporation of Ukraine within the boundaries of the Russian

²³⁾ T. D. Bondar, *ibidem*, pp. 21 and 22.

^{24a} & ^{24b}) The minutes of the sessions of the First (as of all the other congresses of the CPBU) were written in Russian; the quoted text was taken from the work by Bondar, pp. 93 and 92; (italics added, W. S.).

SSR, then it becomes clear that all members of the CPBU without exception were (and still are) forced to carry out unreservedly everything which was decided by the central committee of a foreign (Russian) party under the threat of severe punishment, including physical liquidation. What did the "proletarian centralism" look like in practice could be seen, among other things, from the fact that the CC RCPB dissolved the CC CPBU on October 2, 1919, when the latter failed to carry out the task "of unifying Ukraine with Russia... in the framework of the Russian SFSR". And when at the 4th Conference (having the rights of a congress) of CPBU, which took place on March 17-23, 1920 in Kharkiv —

"in conditions of fierce struggle between the followers of Lenin and the anti-party group of 'democratic centralism' ('decists'), who demanded freedom for factions and groupings within the party... spoke against the line of the CC CPBU, which was *carried out according to the decisions of the party and the directives of the CC RCPB...* a 'decist' majority was elected to the CC CPBU... The CC RCPB adopted a resolution on *the dissolution of the CC CPBU...* and set up a provisional CC CPBU"²⁵.

On the question of international relations between Ukraine and Russia, the 4th Conference of CPBU resolved that all attempts "to break or weaken the ties of Ukraine to RSFSR" are classified as "counterrevolution, aimed against the dictatorship of the proletariat" (i.e. the Russian Communist Party of the Bolsheviks, whose aim was to rebuild the empire). I. Maistrenko rightly asserts that "*the CPBU continued to be an external occupational force...*"²⁶

The 10th Congress of RCPB, held on March 8-16, 1921 (it coincided with the so-called Kronstadt uprising) by a separate resolution clearly forbade the creation of groups and factions among party members holding different views, authorizing the CC RCPB to destroy completely all manifestations of factionalism. From that time on all further attempts to make the CPBU "independent" became practically unthinkable.

It must be added further that the CPBU never had its own program in spite of the fact that the Tahanrih meeting adopted a resolution "to work out a draft program and to present it to the party conference (for consideration)". Soviet author (T. D. Bondar) states that this resolution

"...was not implemented because there was no need of a separate program for the CPBU. The CPBU was guided by the single program of the RCPB, which unfolded the goals and tasks

²⁵) *Ukraïns'ka Radyans'ka Sotsyialistychna Respublika* (collective work — Vol. 17, Ukrainian Soviet Encyclopedia), p. 185, as well as "*Kommunisticheskaya Partiya Ukrainy v rezolyutsiyakh i resheniyakh syezdov i konferentsiy*" 1918-1956. Kyïv 1958, p. 45. (All italics added).

²⁶) I. Maistrenko, *ibidem*, p. 75; italics added.

of political activity of all Communists, including the Communists of Ukraine"²⁷.

In the program of the RCPB adopted at the 8th Congress, held on March 18-23, 1919, that is several days after the approval by the 3rd Congress of the Soviets of Ukraine of the so-called Constitution of the Ukr. SSR, the following was decided among other things:

"Mandatory is the existence of a single centralized Communist Party with one Central Committee, which directs the whole work of the party in all parts of the RSFSR. All decisions of the RCPB and its ruling organs are unconditionally binding on all segments of the party, regardless of their national composition. The Central Committees of the Ukrainian, Latvian, Lithuanian communists enjoy the rights of provincial committees of the party and in their entirety are subject to the CC RCPB"²⁸.

On the occasion of the adoption of a new party program (at the 23rd Congress of the CPSU in October 1961) an article by P. Polezhai, an assistant professor, appeared in the periodical *Radyans'ke pravo*, No. 1/1962 which said among other things: "...The party's policy comes before the law and at the same time gets from it state legalization, as was noted by V. I. Lenin more than once". And in the article by the secretary of the Supreme Soviet of the USSR, M. Georgadze, which appeared in the periodical *Soviety deputatov trudyashchikh* (No. 1/1958) it is stated that

"...the all-round activity of the Supreme Soviet is fully subordinate to the all-guiding party and is directed to the performance of tasks elaborated by the Communist Party, which is the leading force in Soviet society".

As can be seen from this analysis of the role of the party, the Soviet state system of the Ukrainian SSR from its dark beginning²⁹ was

²⁷) T. D. Bondar, *ibidem*, p. 24; italics added.

²⁸) "K.P.S.S. v rezolyutsiyakh i resheniyakh...", Moscow, 1954, Part I, p. 443.

²⁹) As to the date of its beginning and the legal basis for the existence of the Ukr. SSR there are conflicting views among Ukrainian exile scholars; in *Entsyklopediya Ukrainoznavstva* (Vol. 4, p. 1572) Prof. B. Halaichuk and V. Markus' say: "Constitutionally the Ukr. SSR was considered an independent state from March 1918 until May 1920". — without any further explanations, — while in the English-language Ukrainian Encyclopedia, p. 794, Prof. Holubnychy writes that "the Ukr. SSR... was proclaimed in January 1919 just after the defeat of the forces of the Ukrainian National Republic..." Dr. Matviy Stakhiv in his work *Druha soviets'ka respublika v Ukraïni* (The Second Soviet Republic in Ukraine) says that "in the formally legal respect" the Ukr. SSR was... "an independent state of the Soviet type" from January 1919 (p. 212), although in another place he emphasizes that in the fall of 1919 "the second 'Ukrainian Soviet Republic' also ended" (after the liquidation of the Soviet "government" on October 2, 1919 (pp. 152-154). Prof. Sullivant links the date of the rise of the Ukr. SSR with the adoption of the constitution (March 1919) stressing that "in theory, if not in practice... an independent Soviet republic was established".

lacking the most essential element of statehood, the so-called sovereignty, i.e. *its own supreme power*, independent in its internal and external activity from any outside factors. The supreme power in the whole USSR, including the Ukr. SSR, is executed by a *single party* (or more precisely, its central organs — the Central Committee and the Politburo), and since the CPBU is only a provincial cell of that party, state organs of the Ukr. SSR do not exercise as much power, even in the spheres which are strictly “republican” (whose number is steadily decreasing) as do the satellite states, where the power is nevertheless exercised by their own Communist parties, de facto more or less independent from Moscow (but juridically completely independent).

All speculations on the subject of Ukr. SSR’s “statehood” which do not take into consideration *the constitutionally formulated role of the party* in that “Union Republic” must lead to erroneous conclusions, for the Soviet state system is basically different from other state systems in that the element of power is transferred from the “elective” state organs to the organs of the party.

Andrei Y. Vyshinsky in his widely known work on “The Law of the Soviet State”³⁰ states with unconcealed pride that “The Stalin constitution is thus the only constitution in the world which frankly declared the directing role of the party in the state”. And the recently deceased Prof. O. Yourchenko in the introduction to his work³¹ warns against the study or the classification “of legal and government forms which pertain to the Soviet state and legal complex, “apart” so to say from their ideological base and political reality”.

5. The Critical Period — 1920-1923

Referring to the problem of “continuity and succession” of the UNR—Ukr. SSR and the questions which were raised in Section 4, let us try to analyze and to define more accurately a possibility that after the Directory and the Army of the UNR left the territory which came under the control of the Bolsheviks — the heretofore fictitious state and its puppet “government” really did take over the rights and duties of the Ukrainian National Republic and its legal government,

(p. 49). As can be seen, there are three different answers to the same question. Is it possible to speak about “the defeat of the forces of the Directory” as early as January 1919, as is done by Prof. Holubnychyi and is it not necessary to keep in mind the events of the second half of 1919 which are mentioned by Prof. Stakhiv? These are the problems which should be reflected upon by the above-mentioned authors.

³⁰ Vyshinsky Andrei Y., *The Law of the Soviet State*. The Macmillan Co., New York, 1948, p. 628.

³¹ O. Yourchenko, *Pryroda i funktsiya sovets'kykh federatyvnykh form* (The Nature and Function of Soviet Federative Forms), Munich, 1956, Institute for the Study of the USSR — Research and Materials, p. 8.

and if they did, then with what purpose in mind — its continuation or liquidation? This question must be answered in the negative for the following reasons:

1) As defined by the so-called constitution of the Ukr. SSR of March 10, 1919³² “The Ukr. Socialist Soviet Republic is an *organization* of dictatorship of the working and exploited masses...” (beginning of the first paragraph) with completely concrete tasks — “the realization of transition from the bourgeois order to socialism...” (according to the second paragraph), *but no state* in the normal sense of the word (it is characteristic that in the whole constitution there is no mention of the judicial system in that “state”!);

2) handing over to the Russian SFSR the power in the five most essential spheres of state administration (the army, the economy, roads, finance and labour), in compliance with a decree of the All-Russian Central Executive Committee of June 1, 1919. The organs of central government in the Ukr. SSR enumerated in the “constitution” would not even have been capable of taking over and independently executing these state functions;

3) the third occupational government created in February 1920, which at the smallest opportunity issued its own “appeals” and “diplomatic notes”, to everyone’s amazement did not issue a single document, after the Directory’s migration to the West, in which there would be at least an allegation that this “government” is taking upon itself the execution of the state functions, which heretofore were performed by the Directory.

Juggling of phrases about “its firm will to defend the independence and the integrity of the Socialist Soviet Republic of Ukraine” in an appeal by that same occupational government “to all peoples and governments, all, all, all” of February 19, 1920 was dictated by purely tactical considerations for the Russian Bolsheviks wanted:

a) to erase the negative reaction of some members of the CPBU as to the centralist tendencies of the CC RCPB, in particular the

³²) We are giving the date of the first “constitution of the Ukr. SSR” with some reservations, for it is hard to pinpoint for the following reasons: a) At the Third Congress of CPBU which was held on March 1-6, 1919 it was decided — “...to adopt in full and on the whole the *Constitution* of the Russian Socialist Federative Soviet Republic, allowing for its amending depending on local conditions”. b) At the Third All-Ukrainian Congress of Soviets, which was held from March 6th to 10th, 1919 the following resolution was passed — “The constitution is *confirmed in full* and is handed over for final editing to the editing commission of the Central Executive Committee”. c) Under the text of the constitution (in Russian) which was made public on March 18, 1919 there is the following note: “Ratified by the Third All-Ukrainian Congress of Soviets on March 10, 1919. Adopted in the final draft of the *Central Executive Committee of Ukr. SSR* on March 14, 1919”.

This unique in history method of ratification of the fundamental state law speaks for itself and proves that the Bolsheviks attached no particular value to any legal norms, for to them “power always determined the law”.

dissolution (October 2, 1919) of the CC CPBU and the liquidation of the "Provisional Worker Peasant Government", the reaction which among other things manifested itself at the so-called Homel meeting which took place at the end of November 1919, in spite of the prohibition by the CC RCPB;

b) to draw to close cooperation all leftist Ukrainian independence-minded groups [the so-called Borotbists, Ukapists, left-wing Esers (Social Revolutionaries)] in conformity with Lenin's directives, who worked out a new tactic on "the Ukrainian question" in December 1919, which was then adopted by the 8th Conference of RCPB;

c) to obtain recognition of the new "government" (Sovnarkom) by other states and governments, which previously had recognized the UNR and the Directory, ignoring various notes of the former "government", sent out in the period from February to July 30, 1919.

It must be stressed that although the Commissariat of Foreign Affairs (as well as the commissariats of Justice, Agriculture, Education, Foreign Trade and Post) remained "non-unified", Khristian Rakovsky, as Commissar of Foreign Affairs, relatively seldom sent out diplomatic notes solely on behalf of the "government of the Ukr. SSR", and in all matters acted essentially as a "satellite" of the Commissariat of Foreign Affairs of the Russian SFSR, which was then headed by Chicherin. Out of 67 documents, reprinted in the compilation "Ukrainian SSR in the International Arena"³³ in the year 1920, I came across only 9 independent notes (but not a single agreement or treaty), sent to the governments of Poland, Rumania and the Baltic states. Very characteristic i.a. is a note (of July 1, 1920) sent to the Minister of Foreign Affairs of Finland protesting the recognition (for the second time) of the UNR and the Directory³⁴ by the Finnish government, which contains an insolent assertion that

"the Finnish government cannot help but know that Petlyura's government is a synonym for foreign invasion and violence over the will of the Ukrainian people..."³⁵

When the Russian Sovnarkom rejected the proposal of the British government dated July 11, 1920 to terminate the war (with Poland and the UNRepublic) and to begin peace negotiations, it issued an "appeal" to workers, peasants "and all honest citizens of Soviet Russia and Soviet Ukraine" dated July 20, 1920³⁶, signed by Lenin alone, as

³³) *Ukrain's'ka RSR na mizhnarodniy areni* — compilation of documents (1917-1923). Publ. "Scientific Thought", Kyiv, 1966. Issued by the Academy of Sciences of the Ukr. SSR — Section of State and Law.

³⁴) In August 1918 the government of Finland recognized Ukraine's independence and established diplomatic relations with the government of Hetman Skoropadskyi, while on June 11, 1920 the Finnish government confirmed its recognition of the UNRepublic and agreed to renew diplomatic relations with the Directory. See the above-mentioned work, p. 641, note 39.

³⁵) *Ibidem*, Document No. 119, p. 165.

³⁶) *Ibidem*, Document No. 123, pp. 175-180.

head of the Russian Sovnarkom, which already then decided about war or peace not only in Russia, but also in Ukraine, although it was allegedly "independent" and had "its own government". In the same way the terms of the treaty between the Russian SFSR and Poland were agreed upon by the All-Russian CEC on September 23, 1920³⁷ without any kind of participation by the "government of the Ukr. SSR".

A prominent student of Soviet Russian politics toward Ukraine in the years 1917-1957, Prof. Sullivant, states the following:

"Out of 32 treaties and agreements to which Soviet Ukraine was a party, entered into between 1919 and 1924 (including the treaties between Soviet Ukraine and Soviet Russia) in 15 instances negotiations were conducted and treaties signed by representatives of the *Russian* government, who acted on behalf of Ukraine; 14 were such in which the representatives of Soviet Russia conducted negotiations, but the agreements *were also signed* by representatives of Ukraine, and (only) in *three* (3) instances were negotiations conducted and treaties signed by Ukrainian representatives themselves..."³⁸

After signing an armistice and the preliminary conditions of peace with Poland (October 12, 1920) the so-called government of the Ukr. SSR sent out identical notes (November 25, 1920) to the governments of Latvia, Lithuania and Estonia urging them to start negotiations with the aim "of concluding a peace treaty, analogous to those concluded between Lithuania, Latvia, Estonia and the Russian Socialist Federative Soviet Republic..."³⁹ without worrying about the fact that between these three states and Ukraine there never existed a state of war which would demand "the conclusion of a peace treaty" between them. The real motive behind the sending of these "diplomatic notes" was the inclusion of the UNR in the conference of the Baltic states, Poland and Finland, which was held in early September 1920 in Belderingshof near Riga⁴⁰; trying to win recognition for the Ukr. SSR and its puppet "government" the Bolsheviks wanted to liquidate this bloc of states, so dangerous to them, and the diplomatic ties of the UNR.

Appearing outwardly as defenders of "Ukr. SSR's independence" the organs of so-called central Soviet government in Ukraine conducted from within a systematic liquidation of all manifestations of statehood, as can be seen for instance from the resolutions of the 4th All-Ukrainian Congress of Soviets, which took place between

³⁷⁾ *Ibidem*, Document No. 127, pp. 184-186.

³⁸⁾ See 12c) Prof. Sullivant, p. 339, note 91 and the sources quoted; italics added.

³⁹⁾ Compilation quoted in 33), Document No. 146, p. 218.

⁴⁰⁾ V. Kedrovskiy, *Ryzhs'ke Andrusovo*, p. 45 & 47.

the 16 and the 20th of May 1920 in Kharkiv; in the resolution dealing with official relations between the Ukr. SSR and the RSFSR it was stated that "the Ukr. SSR, while preserving its independent state constitution, is a member of the *All-Russian Socialist Soviet Federative Republic*..."

The Congress authorized the Ukrainian CEC "to continue to conduct the same policy of getting closer together" and to reach an agreement with the All-Russian CEC on the matter of inclusion of 30 representatives of Soviet Ukraine into the make-up of the All-Russian CEC, which later (in June 1920) actually did occur. Thus, as maintained by Prof. Sullivant "Ukraine was placed on the level of subordinate provinces of the Russian SFSR"⁴¹.

The so-called "Union Worker-Peasant Treaty between the RSFSR and the Ukr. SSR" of December 28, 1920, which was concluded according to regulations of common international agreements, signed by Lenin personally and ratified immediately by the 8th All-Russian Congress of Soviets which was then in session, was the camouflaging of sorts of Ukraine's annexation. As worded in Article 1, this "military and economic alliance" was in essence a repetition and broadening of the aforementioned decree of the All-Russian CEC from June 1, 1919, as can be seen from the following comparison:

<i>Decree of June 1, 1919</i>	<i>Decree of December 28, 1920</i>
"considers it mandatory to effect close consolidation:	Par. III "both governments proclaim the consolidation of the following commissariats:
1) military organizations and military command,	1) military and naval affairs,
2) councils of national economy,	2) higher council of national economy,
3) railroad administration and agriculture,	3) roads,
4) finances,	4) finances,
5) commissariats of labour".	5) labour,
	6) foreign trade,
	7) post and telegraph offices".

According to Par. IV "consolidated commissariats become part of the Sovnarkom of the RSFSR...", while according to Par. VI — "Direction and control of the consolidated commissariats is to be effected through the *All-Russian* congresses of Soviets..."

The treaty did not mention, as is usually done in real international treaties on "military and economic alliances", either the time of its duration, or (which is even more important) the conditions of its denunciation by each of the treaty partners; therefore there is nothing strange then in the fact that both the Soviet and Western scholars had and still have a great deal of trouble with defining the actual legal character of this treaty, which has all attributes of a treaty

⁴¹) Sullivant, Robert St., *Soviet Politics and the Ukraine 1917-1957*, loc. cit.

imposed by a stronger party, known in law as octroian treaty. One of the students of the Bolshevik revolution, E. H. Carr states that this treaty (just as all similar ones concluded with the Byelorussian SSR and the Transcaucasian SFSR) —

“had some features of an alliance, some of federation and some of a unitary state”⁴².

He adds that in this uncertainty as to the legal status of the treaty

“...The curious may find... a case of history repeating itself.

Generations of historians had debated the question whether the treaty of Pereyaslav of 1654 constituted a personal union between Muscovy and Ukraine or an incorporation of the Ukraine in the Muscovite empire”.

This ambiguity was not accidental but intentional. This is evident, among other things from the resolutions of the 1st All-Ukrainian conference of the CPBU which took place on May 2-4, 1921 which say the following:

“5. The question on the form of official relations between the RSFSR and the Ukr. SSR under conditions of victory of the proletarian revolution both in Russia and in Ukraine has lost its former, typical of bourgeois state relations, sharpness. Where *there are no boundaries between states, except ethnographic*, where there are no tariffs or economic competitions, there *the question of official relations* is solved depending on concrete situation...” (i.e. as Russia sees fit).

After mentioning various periods of “Ukrainian statehood” (only Soviet of course) the resolutions further state that:

“...with all these outward changes only the form had changed, but *not the nature of official relations between the republics* built on the bases of fraternal unity and solidarity of workers, which are still incomprehensible to Ukrainian chauvinists, *who are evaluating state relations* of the Soviet republics according to the clichés of bourgeois constitutions and bourgeois political science. For the Communist Party of Ukraine the question of Ukr. SSR's attitude to RSFSR *was never a question of principle*, but *exclusively* the question of *revolutionary expediency*, and he, who in the midst of our party would attempt to pour the question on state relationship (independence or the principle of one and indivisible Russia) into the form of disagreements in principle would in fact become a leader in the party of the ideas of Great Russian or Ukrainian chauvinism...”⁴³

During 1921 and the first half of 1922 the Russian Sovnarkom and the CEC of RSFSR treated Ukraine as an integral part of Russia, and

⁴²) Carr, Edward Hallett, *The Bolshevik Revolution 1917-1923*; Volume I, Pelican Books A749, 1966, p. 393.

⁴³) *Kommunisticheskaya Partiya Ukrainy v rezolyutsiyakh...* (as in 25), p. 134.

not as "an independent and sovereign" state and ally. The Russian government authorities did not even try to fulfil Par. V of the treaty of December 28, 1920, which provided that:

"The order and form of internal government of Consolidated Commissariats is to be established by special agreements between the two governments".

Besides this, they did not permit representatives of the Ukr. SSR to assume leadership and control of the consolidated commissariats, as had been provided in Par. VI of the treaty, and in numerous instances even gave directives directly to individual commissariats of the Ukr. SSR, including those which remained unconsolidated as for instance, agriculture, justice, education, etc. And when they usurped the right "to defend the interests" of the Ukr. SSR (and of all the other "republics") at the Genoa conference which was held from April 10th until May 19, 1922 and concluded the Rapallo treaty with Germany (April 16, 1922) with participation of representatives of the Ukr. SSR, then even Kh. Rakovsky realized what in practice is the allegedly "independent" Commissariat of Foreign Affairs headed by him, and the whole "government" of the Ukr. SSR. As the result of formal protests by Skrypnyk, Rakovsky and others the CC RCPB called to life (in May 1922) a separate commission under the leadership of M. V. Frunze which worked out a resolution "about the inadmissibility of measures which in practice would lead to the liquidation of the Ukr. SSR and to the lessening of power of its Central Committee, the Sovnarkom and the central organs". This commission condemned the practices of the Commissariat of Foreign Affairs of the RSFSR and drafted several agreements dealing with the actions of the commissariats of both republics, but this did not improve the situation at all⁴⁴. On the contrary, the Russian Bolsheviks, consolidating their power and achieving considerable successes at the international forum, were attempting to liquidate even the fictitious "statehood" of the republics, which was granted to them in the treaties of alliance. In the second half of 1922 work began for a speedy organization of the one and indivisible Russia under the cover of the U.S.S.R.

The Politburo of the CC RCPB called to life (August 10, 1922) a separate commission made up of representatives of the CC RCPB and the Central Committees of other Communist parties, headed by Stalin, "to prepare and solve the question of interrelations" between individual "republics" and the Russian SFSR. Stalin worked out the so-called proposal of "autonomization" according to which the republics would have had to unite with the RSFSR by way of their entering the Russian SFSR on the basis of autonomy, and not federation, which corresponded to Stalin's personal views, who as early as 1920 expressed the idea (in a letter to Lenin dated June 12, 1920)

⁴⁴) See 12a) Prof. Pipes, p. 264 and the sources quoted there.

that "in reality there is no difference between the Ukrainian and the Bashkir form of federation, for it is so small that it equals zero"⁴⁵.

Stalin's proposal, which he sent to various central committees of the republican branches of the party for discussion and confirmation, encountered sharp protests, in particular in Georgia, where a serious affair broke out in this connection and in which Lenin himself became involved later on. The Central Committee of the Communist Party of the Bolsheviks of Ukraine delayed in answering rather long and then on October 3, 1922 finally adopted the following resolution:

"1. To express categorical support for the resolution on inter-relations between the RSFSR and Ukr. SSR passed by the last plenary session of CC CPBU, as mandatory to preserve the independence of the Ukr. SSR and the formulation of inter-relations, adopted by the commission of com. Frunze... Actual centralized direction of independent republics can be fully achieved by appropriate directives along the party line.

2. In the event that the CC RCPB will nevertheless accept the necessity of Ukr. SSR's entry into the RSFSR, *not to insist upon the preservation of the formal attributes of Ukr. SSR's political independence*, but to determine relations on the basis of practical expediency"⁴⁶.

As the consequence of intervention by Lenin, who was a shrewder tactician than Stalin, the CC RCPB decided to create the USSR and in order to draft "the treaty on the establishment of the Union of S.S.R." called to life the second, 11-men commission, composed of Kalinin, Kamenev, Pyatakov, Rykov, Stalin and Chicherin and the representatives of five "republics" (Ukraine, Byelorussia, Azerbaijan, Armenia and Georgia). The new proposal on federation also met with opposition in Georgia and Ukraine, where inside the CPBU a struggle was taking place between the supporters of confederative ties and broader rights for the Ukr. SSR, and the "centralists" that is the Russians and the Russified "nationals", who penetrated the party and the state apparatus in order to preserve the empire. The controversy surrounding the question of "federation or confederation" is even dealt with by Soviet historians⁴⁷.

On December 29, 1922, immediately after the 10th All-Russian Congress of Soviets (23-27. XII), a conference of delegates elected by the congresses of the "republics", which resolved to hold on the next day the so-called First Congress of Soviets of the USSR, at which after Stalin's address the following were adopted:

⁴⁵) *Ibidem*, p. 270.

⁴⁶) B. M. Babiy, *Ukraïns'ka Radyans'ka derzhava (1921-1925)*, Kyïv, 1961.

⁴⁷) D. A. Chugaev, *Kommunisticheskaya partiya organizator mnogonatsionalnogo gosudarstva*, Moscow, 1954.

a) Declaration on the establishment of the Union of the Soviet Socialist Republics, and — b) *Treaty on the establishment of the Union of the Soviet Socialist Republics*⁴⁸. The declaration stated among other things that “conditions imperatively demand the unification of the Soviet republics into *one union state...*”, while “the treaty” specifies the principles of this “unification” in 26 points, which later became the basis for the first constitution of the USSR. Without going into a detailed analysis of the terms of this treaty, I must emphasize that the definition of the newly created state entity (both in the declaration and in the treaty, and later in all works of Soviet jurists and historians) as “ONE” (also “single”) — “union state” introduces into the concept of federativeness (“union state”) *an element of unitarianism*, for so far in the legal sense “one — state” is a synonym for a unitary state (in German *Einheitsstaat*). The aforementioned Prof. O. Yourchenko says the following on this subject in his interesting work:

“It can be assumed that the term “one” in conjunction with “union” reflects a clear tendency in fact to underline and to distinguish the exceptional and specific character of the Soviet state entity, which united in itself *the federative form and the centralized essence of internal relations*”⁴⁹.

At this time it should be mentioned that Lenin, being sick, did not attend the congress personally, but was very interested in it, and — being a good strategist — saw that CC RCPB and Stalin went too far and too fast in the direction of reconstruction of the one and indivisible Russia under the cover of the USSR. Forcing the doctors to grant him permission to work for 10-15 minutes a day he dictated notes to his secretaries, of which three, dated December 30 and 31, 1922 were devoted to the national question. These notes have not been published in Lenin’s native land until 1956 and only after Khrushchov’s so-called “de-Stalinization speech” did they appear in the periodical *Kommunist* No. 9, 1956 and were later included in the fourth edition of Lenin’s works, published in 1957 (Vol. XXXIII, pp. 553-559)⁵⁰. In the first note Lenin condemned the “apparatus” (party and state) — “borrowed from tsarism and only slightly greased with Soviet oil...” and with respect to “the freedom of secession from the Union” (point 26 of the treaty) “by which we are justifying ourselves”, Lenin stated that the “right of free secession” —

⁴⁸) Full texts of both documents of December 30, 1922 in Ukrainian are to be found in compilation quoted in 33) pp. 554-555 (Document No. 281) and pp. 556-560 (Document No. 282).

⁴⁹) See 13), pp. 60-61.

⁵⁰ & ⁵¹) The English translation of all three notes can be found in Prof. Pipes’ work, pp. 282-287. Ivan Dzyuba also refers to these notes in his work *Internationalism or Russification?*, Weidenfeld & Nicholson, London, 1968, p. 126.

“will be a mere scrap of paper, unable to defend the non-Russians from the onslaught of that really Russian man, the Great Russian chauvinist, in substance a rascal and a tyrant, such as the typical Russian bureaucrat is. There is no doubt that the infinitesimal percentage of Soviet and Sovietized workers will drown in that tide of chauvinistic Great Russian riff-raff like a fly in milk”⁵¹.

These words of Lenin must be remembered by all those who consider “the right to free secession”, guaranteed by no one and nothing, (the ancient Romans called such a right “lex imperfecta”!) as a basis of Ukr. SSR’s “statehood”.

I do not consider it necessary to discuss the other two notes by Lenin, dated December 31, 1922, although they are also interesting since the ideas expressed in them had no influence whatsoever either on the flow of events in the USSR or the historic evaluation of Lenin, as the one who by tactical cunning, or even violence at times, saved the Russian empire for “the chauvinistic Great Russian riff-raff” at the expense of the subjugated nations. Lenin’s “solution of the nationality question” (= assimilation) is analyzed quite correctly by some Western scholars⁵², and is consistently put into effect on the territory of the USSR by typical “Russian bureaucrats”.

In the first half of 1923 debates on the formulation of the constitution of the USSR were held both in a separate constitutional commission and inside the party, and in particular at the 7th Conference of CPBU, which took place on April 4-10 and at the 12th Congress of RCPB from April 17-25, 1923. At all these debates, which centered around the national question, Georgians, Mdivani and Makharadze, and representatives of the Ukr. SSR (Shumskyi, Skrypnyk and even Kh. Rakovsky) submitted various counterproposals with the aim to guarantee in a new state entity the rights due to the “republics”. However, in view of the numerical superiority of the Russians and the Russified elements⁵³ almost all of their amendments to the constitution were rejected.

The constitution was ratified on June 26, 1923 by the real sovereign of the new state, the Central Committee of the Russian Communist Party of the Bolsheviks, and on July 6 by the second session of the First Congress of Soviets of the USSR, putting it into force immediately, in spite of the fact that the adopted text was not yet complete and final (the final constitution was ratified by the Second Congress of Soviets on January 31, 1924). On July 13 the Central

⁵²) Low, Alfred D., *Lenin on the Question of Nationality*. Bookman Associates, New York, 1958. Goodman, Elliot R., *The Soviet Design for a World State*. Columbia University Press, New York, 1960. Conquest, Robert, *Soviet Nationalities Policy in Practice*. Frederick A. Praeger, Publisher, New York-Washington, 1967.

⁵³) The above-mentioned work by Prof. Pipes, pp. 264-266 and 290-293, as well as the statistical table on the national composition of the RCPB membership in 1922, p. 278.

Executive Committee of USSR in an appeal "to all peoples and governments of the world" told of the establishment of "a single union state", and in ten days, on July 23, 1923 "the governments of the Ukr. SSR" handed a notice to all foreign representatives in Moscow stating that the Ukr. SSR "has transferred to the Union of SSR the conduct of all its international relations... and the realization of foreign trade relations..."⁵⁴.

The process of putting together a new Russian empire, defeated in 1917 by the spontaneity of the subjugated nations, was thus completed under a new label, the USSR, with the new autocrat, the mono-party and its politbureau, the secretariat and General Secretary Stalin.

And in Ukraine a reverse process came to an end — the liquidation of even that fictitious state, created upon Lenin's directions and in accordance with the resolutions of the 7th Conference of the RCPB of December 1919, with which the Russian SFSR "entered into a military and economic alliance" on December 28, 1920.

Prof. Charles de Visscher states in his short study⁵⁵ that the December 30, 1922 treaty and the 1923 constitution of the USSR —

"achieved the disappearance of the Ukrainian state by way of renunciation by that state of its independence on the international level".

I must emphasize that this liquidation pertained to the fictitious state — the Ukr. SSR, because, as understood by "bourgeois political science" i.e. Western constitutional law, the Ukr. SSR was not a state, *only an annexed territory of the Ukrainian National Republic without its own boundaries* (see above-mentioned resolution of the First All-Ukrainian Meeting of CPBU of May 2-4, 1921), which by the decision of the highest organ of the central Soviet government (see Par. 7 & 10 of the March 1919 constitution) of the 4th All-Ukrainian Congress of Soviets of May 16-20, 1920 *was proclaimed an integral part* (compare the words "is a member") *of the single state RSFSR*, even before it was completely occupied militarily⁵⁶. Outside forms, as for instance the constitution of the Ukr. SSR, which was a carbon copy of the constitution of the RSFSR of July 1918 and "the government" of the Ukr. SSR, which arose by the will of the occupying power and acted exclusively in its interests, "depending on a concrete situation", in no way provided a reason to regard the Ukr. SSR as

⁵⁴) Compilation cited in 33), Document No. 318, p. 633.

⁵⁵) P. De Visscher, "*A propos de la personnalité juridique de l'Ukraine*" in the compilation: *L'Ukraine dans le Cadre de l'Est Européen*, Research Notes of the Ukrainian Free University of Munich, Louvain—Paris, 1967, pp. 95-107, quotation from p. 102.

⁵⁶) The so-called winter expedition to the right bank of the Dnipro of the UNR Army lasted from December 1919 until June 1920, while on April 25, 1920 the Polish-Ukrainian armies began an attack against the Bolsheviks, and captured Kyiv on May 7-8, 1920.

a genuine state. Only from the point of view of Soviet state law, if one can talk about it at all, in particular in the period of so-called "war Communism" when the principle of "revolutionary expediency" was the basic "legal" norm, could the Ukr. SSR be considered a state in a quasi-confederative link with the RSFSR.

From the point of view of international law, which does not deal with the analysis of the internal state structure, nor the degree of states' independence, one can consider the Ukr. SSR of the 1921-1923 period a state entity of sorts, in which "the Soviet government" took the place of the "Directory's government", in spite of the fact that it acted as a liquidator of international ties of the Ukrainian National Republic.

6. Peculiarities of Soviet Federalism

All students of Soviet state system emphasize and prove that prior to the Revolution of 1917 the Bolsheviks were hostile to all federalistic concepts and supported strict centralism as the basic organizational principle of the Soviet state. Even Soviet jurist D. L. Zlatopolsky comes to the same conclusions:

"... Only after the October Revolution did the party begin to support firmly the view favouring recognition of federation as the form of state order in the Soviet multinational state"⁵⁷.

He stresses that the federative form of state organization is "subordinated to the task of the solution of the nationality question..."

Stalin arguing for the adoption of the federative concept defined the reasons for the change of views regarding federation as follows:

"First... at the time of the October Revolution a number of nationalities of Russia found themselves in fact in the state of complete separation and completely out of touch with one another, because of which federation appeared to be a step ahead from the differentiation of the working masses of these nationalities to their reconciliation..."

Second... the forms of federation themselves which emerged in the course of Soviet construction proved far from being so contrary to the goals of economic cooperation of the working masses of the nationalities of Russia, as it might have appeared earlier, or even completely non-contradictory to these goals, as was shown later in practice...

Third... the exact importance of the national movement proved to be much more serious, and the way to unification of the nation far more complicated, than it might have appeared earlier in the period before the war, or the October Revolution. These move-

⁵⁷) Zlatopolsky D. L., *Obrazovaniye i razvitiye SSSR kak soyuznogo gosudarstva*, Moscow, 1954.

ments went so far that the old plan of autonomy... proved to be inapplicable in a number of cases..."⁵⁸.

As can be seen from the above, the "federalism" of the Soviet type forced upon them by actual circumstances, was conceived and shrewdly used by the Russian Bolsheviks as a mechanism:

1) of constant interference by the Russian center in the affairs of the "borderlands", in particular Ukraine, which were legally and de facto separated;

2) of gradual integration of these "borderlands" in the empire which they were reconstructing;

3) of manipulation in the sphere of "self-determination of nations" and in the so-called solution to the national question.

According to the program of the RCPB of March 1919 "federative unification of states organized in Soviet style" — should be considered "as one of the transient forms on the way to complete unity"⁵⁹. In the process of putting together a unitary, autocratic Russia, defeated by the liberation revolutions of the subjugated peoples, Soviet "federalism" was conceived as a temporary phenomenon and served in the role of a masquerade garment which concealed the real aim of the RCPB and state organs of the new Russia — the reconstruction of the "one and indivisible". It never became a lasting principle, in form and contents, of regulating international and interstate relations, as for example was later the case in Yugoslavia. In order to achieve their objectives the Bolsheviks: a) filled the forms of a federative state known in the West with *specific Bolshevik substance*⁶⁰ preserving, in contradiction to the real principles of federalism, *the unitary, centralized* monoparty, whose members were dispatched to various key positions both in the provincial branches of the party and in the so-called "governments of the union republics"; b) with the help of such "dispatchees" they firmly took into their hands absolute and exclusive administration of all economic and military affairs, prior to the creation of the "federative state", the USSR.

The difference as to political goals and structural principles between the Western and Soviet federalism, which has been pointed out by quite a few researchers can be briefly summarized (without exhausting the subject completely) in the following points:

⁵⁸) Stalin, J. V., *Sochineniya*, Vol. 5, p. 265; also A. Y. Vyshinsky in work quoted in note 30) pp. 224-5.

⁵⁹) VKP(b) *v rezolutsiyakh...*, Moscow, 1940, pp. 286-7. Also see note 52, Goodman, pp. 224-6 and the sources cited there.

⁶⁰) Work by Prof. Yourchenko quoted in 31) and chapters VII and VIII of E. R. Goodman's work quoted in 52); also A. Y. Vyshinsky speaks about "a new type of federation — the Soviet type, radically differing from the bourgeois type of federation..." (p. 224).

1) A possibility to change the Union constitution, that is also to change the federative system to a unitary one, by the decision of both houses of the Supreme Soviet without asking the member units of the federation for their consent;

2) a lack of a judicial organ which would decide possible conflicts between the Union and its component parts and which would guard the constitutionality of laws passed by the All-Union and the republican organs of government;

3) the budgets of the "republics" constitute an integral part of a single state (All-Union) budget which is voted on not by the republics but by the All-Union organs of government, at a time when the republics have no right to levy taxes for their exclusive needs;

4) ambiguity in the division of power between the "All-Union", "union-republican" and "republican" organs of state government and the possibility to change this power by an ordinary "ukase";

5) "the right of free secession from the union", which allegedly "is granted to each union republic", but which is nevertheless denied not only in the party's charter, but also in the criminal code, which carries force on the territory of all union republics.

I do not want to spend any more time with the analysis of Soviet "federalism" which in words of A. Y. Vyshinsky himself —

"Both by its class essence and by its organizational structure... is sharply distinguished from all existing forms of federation, confederation, and unitarism formerly or now existing in the capitalist world. *It is a type of state without a precedent in history*"⁶¹.

It is necessary to define the character of the state system in the USSR for this system also determines the state system in the Ukr. SSR and the legal meaning of the concept "union republic" itself. If one were to consider the USSR as a real federation then the position of the Ukr. SSR in this federation could possibly be compared with the position of Swiss cantons, American "states", British dominions, or German "länder", as is done by some students. However, on the basis of detailed analysis of all documents, the majority of objective students consider the USSR a unitary and even a highly centralized state, in which the so-called union republics have at times less autonomy than was enjoyed by the so-called *zemstvos* (country councils) of the tsarist times. The term "union republic" is in essence only a name for the administrative territorial unit of this unitary state, which under the name USSR is a continuation of the imperial Russia, or ancient Muscovy.

In conclusion, a brief word about Soviet "self-determination". In the declaration "of the rights of the peoples of Russia" of 2/15

⁶¹) Work by A. Y. Vyshinsky quoted in 30) pp. 228-9.

November 1917 we find that the Russian Sovnarkom resolved to put at the basis of its activity among other things:

“The right of the *peoples* of Russia to free self-determination including separation and establishment of an independent state”.

However, in a month's time, at the 3rd All-Russian Congress of Soviets, which was held on 10-18 (23-31 N.S.) January, 1918, Stalin (perhaps influenced by the actual self-determination of Ukraine by the 4th Universal) considered it mandatory to interpret the principle of self-determination in a sense that self-determination is “a right *not of the bourgeoisie, but of the working masses* of the given nations. The principle of self-determination must be an *instrument in the struggle for socialism* and must be *subordinated* to the principles of socialism”⁶². And these principles — to add on our part, are instituted by the leadership of the Russian party and state. More of similar “definitions” of the right of nations to self-determination later appeared from under the pen of Lenin and Stalin, and all of them can be boiled down to the fact that only “the proletariat”, or rather its “avant-garde” the Russian party of the Bolsheviks, has the sole right to speak on behalf of the peoples.

⁶²) Work by E. H. Carr quoted in 42), Vol. I, p. 272 with a reference to an incomplete set of documents from the 3rd All-Russian Congress of Soviets.

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