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The Legal Status of the Soviet Foreign Trade Monopoly in the Federal Republic of Germany

I. Introduction

Today the Federal Republic of Germany is the most important Western trade partner of the U.S.S.R.[1] During the more than twenty years that West German citizens, personal partnerships and stock corporations have conducted commercial transactions with Soviet trade organizations, few legal disputes have arisen. This may account for the lack of legal publications on West German/Soviet trade relations.[2]

However, *Luchterhand Verlag v. Verlagsgruppe Langen-Mueller,* a pending case in the German Federal Supreme Court illustrates the importance of clarifying the basic legal principles of West German/Soviet commercial relations. In 1971 Luchterhand Verlag concluded a written contract with Solzhenitzyn, represented by his Swiss lawyer Dr. Fritz Heeb, concerning the copyright of the novel, *August 1914.* Although Langen-Mueller Verlag did not conclude a copyright contract with Solzhenitzyn, Langen-Mueller translated the novel into German and published it. Luchterhand Verlag sued Langen-Mueller regarding alleged copyright damages for the publication of the novel. The decision in this pending case requires a determination of the Soviet foreign trade law, in particular the application of the Soviet foreign trade monopoly in West Germany. The principle of the foreign trade monopoly means that all foreign trade of the U.S.S.R. has to be executed by state organs and that all private foreign trade is prohibited. The Luchterhand Verlag sought to achieve by valid contract with Solzhenitzyn the copyright of the novel *August 1914.* According to the defendant, Langen-Mueller, the contract between

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[1]Klotschek, *Der Aussenhandel der Sowjetunion im Jahre* 1972, AUSSENHANDEL (Heft Nr. 5, 1973) at 2.

[2]Among the literature dealing with East-West trade there is none considering international treaties and their effects on domestic laws.

Solzhenitzyn and Luchterhand is void because of infringement of the Soviet foreign trade monopoly.

In essence, the argument is that only the proper Soviet state organizations have the right to conclude foreign agreements, not Solzhenitzyn, and therefore the contract between Solzhenitzyn and Luchterhand Verlag is void under Soviet law. The problem for the West German Supreme Court is, whether the contract is void also according to West German law. This would be the case, if West German courts had to apply the rules of the Soviet foreign trade monopoly. The Russian foreign trade monopoly is postulated by Soviet doctrine as a private international law binding extraterritorially upon foreign courts as well as upon domestic courts. The legal basis of this extraterritorial application cannot be admitted, because the U.S.S.R. cannot insure the enforcement of a rule in a foreign country.[3] All rules duly enacted by a country are valid only territorially. If laws are valid extraterritorially, it is through the application of conflict of laws.[4] Therefore, if the provisions of the Soviet foreign trade monopoly are valid and enforceable in West Germany, it must be so by either federal German law or through the application of principles of German conflict of laws.

II. The Soviet Foreign Trade Monopoly

A. Principles and Functions

The state foreign trade monopoly was established in the Russian Soviet Federated Socialist Republic (R.S.F.S.R.) on the 22nd of April, 1918, by special decree promulgated by Lenin. When the Soviet Union was created in 1922, the validity of the decree was extended from the R.S.F.S.R. to the whole of the Soviet Union.[5] The principle of public monopoly means that state instrumentalities alone have legal authority to effect international commercial transactions. By excluding all private entrepreneurs from foreign trade, the state alone decides what and how much is to be bought or sold.[6] The state monopoly of foreign trade has five main functions:

1. Protection of the socialistic planned economy against undesired economic effects of the capitalistic world market (defensive function).
2. Coordination of the Soviet economy with the economies of the other Eastern countries (integration function).
3. Coordination of foreign trade and domestic trade according to the total economic national plan (planned economy function).
4. Guaranty of a central foreign trade policy and power over the developing countries (political function).

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[3]Guggenheim, *Lehrbuch des Völkerrechts,* Band I, (Basel 1948) at 134.

[4]Ferid, Wechselbeziehungen zwischen Verfassungsricht und Kollisionsnormen in: Festschrift fur Hans Dolle Band II (Tübingen 1963) at 130.

[5]Berg, Strategische Bedeutung des Ost-West-Handels (Leyden 1966) at 43.

[6]PISAR, COEXISTENCE AND COMMERCE (New York 1970) at 142.

5. Import and export direct by state instrumentalities; the state receives additional benefits of the profits usually made by a commission agent (profit function).[7]

B. Soviet Foreign Trade Legislation

The principle of a state monopoly was incorporated into article 14, section h of the 1936 constitution.[8] Private foreign trade is totally prohibited.[9] The organization of government-conducted foreign commerce as well as the execution of transactions is covered in various laws and statutes. The private international law of the U.S.S.R. is not codified but partly contained in the 1962 principles of civil legislation.

As the principle of the state monopoly is Soviet doctrine, foreign trade monopoly rules are "extraterritorial" regardless of the law the parties to a transaction have chosen, or the law to be applied according to a rule of conflict of laws for all foreign trade relations the statutes ruling the foreign trade monopoly must be regarded as independent of the place of contract and applicable state law. The rules concerning the state monopoly thus have extraterritorial effect.[10]

Therefore, while it is a basic principle of private international law that issues of formality are referable to the law of the place of contracting, article 125, section 2 of the Principles of Civil Legislation determines that the formal validity of a contract concluded by Soviet trade organizations, in the U.S.S.R. as well as abroad, must always satisfy the formality requirements of Soviet law.[11]

According to the 1924 Principles of the Penal Legislation of the U.S.S.R. and the 1927 Penal Code of the R.S.F.S.R., the violation of statutes ruling the foreign trade monopoly were considered as a crime against the Soviet administration.[12] Since 1959, however, the violation of foreign trade monopoly law is not considered a criminal act.[13]

C. The Organization of Total State Trading

The monopoly power of Soviet foreign trade is delegated to the minister of foreign trade.[14] Abroad, he is assisted by a trade delegation which represents the

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[7]For example: 1972 the U.S.S.R. bought 200.000 tons of butter from the E.E.C., DM 0,55 per pound; Soviet consumers had to pay DM 7. per pound. Der Spiegel, (April 30, 1974, Vol. 18) at 106.

[8]PISAR, at 141.

[9]Article I, section 2 of Decree GS 1918, Nr. 33, art. 432 (April 22, 1918).

[10]LUNZ, INTERNATIONALES PRIVATRECHT (East-Berlin 1961) at 17.

[11]Pisar, *Soviet Conflict Of Laws In International Commercial Transactions,* HARV. L. REV. Vol. 70 (1957) at 650.

[12]Brenscheidt, *Die rechtlichen Wirkungen des sowjetischen Aussenhandlesmonopols,* DER BUNDESREPUBLIK DEUTSCHLAND (München 1974) at 28.

[13]Schroeder, *Der strafrechtliche Staatsschutz,* DER SOWJETUNION, DER TSCHECHOSLOWAKEI, Ungarn und Polen (Munchen 1963) at 74.

[14]*See* article 72, 75, 77 Soviet Constitution.

monopoly outside the U.S.S.R. to effectuate its policy and to facilitate and supervise the local business activities of Soviet enterprises.[15] The trade representation is attached to the Soviet Embassy and the trade representatives and his deputies enjoy diplomatic privileges and immunities.[16]

While formerly the trade representation mainly executed commercial transactions for which the Soviet state was liable, in recent years direct commercial activities have been substantially reduced in favor of the operation of foreign trade organizations.[17] These organizations are legally autonomous entities. Although the foreign trade organizations are subordinated to the minister of foreign trade, they act for their own accounts, and the Soviet state is not responsible for their debts.[18]

Today fifty-one foreign trade organizations exist in the U.S.S.R.[19] Each has the exclusive right to deal abroad in defined groups of commodities or services—"monopolies within monopolies."[20] The powers of Soviet foreign trade organizations are defined in their charters. Transactions concluded in derogation of the limits established in the charter are considered void, comparable to the principle of *ultra vires* in Anglo-American corporate law.[21]

D. The Foreign Trade Monopoly in Bilateral Trade Agreements

To facilitate trade relations with capitalistic countries, the U.S.S.R., being a state trade country, concluded with several countries bilateral trade agreements, incorporating the recognition of the foreign trade monopoly by the foreign country as well as the recognition of the diplomatic status of the trade delegations abroad.[22] Thus the principle of the Soviet foreign trade monopoly is fixed in all trade agreements concluded by the U.S.S.R. since 1922.[23]

III. The Legal Enforcement of the Soviet Foreign Trade Monopoly in the Federal Republic of Germany

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[15]PISAR, COEXISTENCE AND COMMERCE (New York 1970) at 143.

[16]PISAR at 144.

[17]*Id.*

[18]Starr, *A New Legal Framework for Trade Between the United States and the Soviet Union: The 1972 U.S.-U.S.S.R. Trade Agreement,* THE AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 67, No. 1 (January 1973) at 74.

[19]Patolitschew, Aussenhandel der USSR: Gestern-Heute-Morgen (Moskau 1972) at 12.

[20]PISAR, COEXISTENCE AND COMMERCE (New York 1970), *supra,* note 15, at 147.

[21]Pisar, *Soviet Conflict Of Laws In International Commercial Transactons,* HARV. L. REV., Vol. 70, (1957) at 642, footnote 158.

[22]*See: The 1972 U.S.-U.S.S.R. Trade Agreement,* INTERNATIONAL LEGAL MATERIALS, Vol. XI, Number 6, (November 1972) at 1321.

[23]KIESEWETTER, DER OSTBLOCK, Berlin 1960, at 16.

A. Introduction

Under Soviet rules, the general diplomatic recognition de jure of the U.S.S.R. automatically includes the recognition of the foreign trade monopoly.[24] This claim cannot be admitted. The general diplomatic recognition de jure of the Soviet Union does not necessitate the special recognition of the foreign trade monopoly. Since the foreign trade monopoly claims extraterritorial enforcement to govern certain commercial relations within foreign territories, a particular public international recognition is necesary. As stated above, all rules enacted by a state are valid only territorially. The Soviet Russian foreign trade monopoly could be valid in West Germany only by force of federal law, either through article 25 of the German Constitution or through consent or agreement, as evidence by Federal law, of the competent parties in any specific case of federal legislation.

B. Legal Basis

1. ARTICLE 25 OF THE GERMAN CONSTITUTION

Article 25 of the German Constitution reads as follows:

> The general rules of public international law are an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory.[25]

The Soviet foreign trade monopoly would be per se a part of the law of the Federal Republic of Germany if it could be considered a "general rule of public international law." It is well settled that rules of public international law are "general" only when they are duly recognized by the majority of the nations of the world.[26] Although a foreign trade monopoly was enacted as a domestic law in most of the socialistic countries since World War II, the existence of public international law could not be proven by domestic law, but only by demonstration of constant international application plus "opinio necessitatis."[27]

As regarded the characterization of a foreign trade monopoly as being supported by customary international law, it can only be mentioned that all foreign states trading with the U.S.S.R. have recognized the Soviet trade monopoly. This recognition, however, is not based on customary international law but on particular bilateral treaties.[28] As a result, the principle of Soviet foreign trade monopoly can only be considered as customary international law if

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[24]CLEINOW, DAS DEUTSCH-SOWJETISCHE VERTRAGSWERK VON 1925 (Berlin 1926) at 241.
[25]PEASLEE, CONSTITUTIONS OF NATIONS, Revised 3rd Edition, Vol. VII, Europe (1968) at 366.
[26]Maunz, *Das Deutsche Staatsrecht*, 18. AUFLAGE (München-Berlin 1971) at 331.
[27]Berber, Lehrbuch des Voelkerrechts, I. Band, (München-Berlin 1960) at 50.
[28]MENZEL, VOELKERRECHT (München-Berlin 1962) at 86.

a customary law created by bilateral treaties can be hypotheorized.[29]

Although the Soviet Union has concluded international trade treaties with almost identical texts for many years,[30] it is well acknowledged that public international treaties do not create customary international law.[31] It follows, therefore, that the Soviet foreign trade monopoly is not a general rule of public international law and accordingly is not a binding constituent part of the German federal law through article 25 of the German Constitution.

2. FEDERAL LAW OF MARCH 17, 1959 AND TRADE AGREEMENT OF APRIL 25, 1958 BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE SOVIET UNION

On April 25, 1958, the German Federal Republic and the Soviet Union concluded a treaty covering general matters of trade and navigation.[32] According to article 59, section 2, subsection 1 of the German Constitution, "Treaties which regulate the political relations of the Federation or relate to matters of federal legislation shall require the consent of participation, in the form of a federal law, of the competent bodies in any specific case for such federal legislation."[33] After the Bundesrat had approved the treaty,[34] the Bundestag gave its consent to the treaty in the form of a federal law[35] on March 17, 1959.[36] Thus, the public international trade agreement had been transformed into national law which is given the rank of a federal law.

In article vii, section 1 of the trade agreement, the German Federal Republic granted to the Soviet Union the right to establish a trade representation in the Federal Republic of Germany. By allowing the Soviet Union to exercise its trade monopoly through a trade representation within the territory of the German Federal Republic, the Federal Republic of Germany accepted the Russian foreign trade monopoly de jure. But is this de jure recognition of the trade monopoly binding on the citizens, bureaucracy and courts of West Germany? The federal validity and the federal operativeness of the trade agreement must be carefully distinguished. Hence the question is whether the public international recognition of the Soviet foreign trade monopoly is self-executing.

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[29]According to Soviet authority the Soviet foreign trade monopoly laws recognized by several countries in bilateral treaties are an existing part of customary international law; see Lewin, Grundprobleme des modernen Völkerrechts, in: Drei sowjetische Beiträge zur Völkerrechtslehre, (Hamburg 1969) at 61.

[30]PFUHL, RECHTSFORMEN DES SOWJETISCHEN AUSSENHANDELS (Berlin 1954), at 55.

[31]Guggenheim, Lehrbuch des Völkerrechts, Bank I, (Basel 1948) at 50; Verdross, Volkerrecht, 5 Alflage, (Wien 1064) at 141.

[32]BGBl. 1959, Teil II, at 222.

[33]PEASLEE, CONSTITUTIONS OF NATIONS, revised 3rd Edition, Vol. VII, EUROPE (1968), at 373.

[34]July 18, 1958; Bundestag—Drucksache Nr. 545 at 40.

[35]The federal law giving consent to ratification and transforming the international law rules into domestic law shall be called "Vertragsgesetz" (Treaty-law).

[36]BGBl. 1959, Teil II at 221.

According to Evans,[37] a treaty is self-executing if it ". . . furnishes by its own terms . . . . a rule of law for the executive branch of the government, the courts, the states or for private individuals. An executory, or non self-executing treaty is one which explicitly or implicitly requires implementation by some executive or legislative agency . . . before it can become a rule for the court or a private individual."

This definition cannot be admitted entirely. It seems more reasonable to examine each single clause of a treaty and decide then whether or not the clause by its terms or its nature is self-executing. Self-executing character is proven,[38] only if a clause is *ex proprio vigore* directly enforceable in the national courts. As treaties usually contain clauses which are self-executing as well as clauses which are executory, each single provision must be considered on its applicability.[39]

In this connection article vii, section 1 of the trade agreement should be examined in connection with the annex attached to the agreement. According to article vii, section 2 of the trade agreement, the annex constitutes an integral part of the trade agreement. The articles of the annex generally regulate the functions, privileges, immunities and organization of the trade representation.

As stated in article 1, section C of the annex, the trade representation shall conclude contracts and perform transactions on behalf of the Soviet government as well as represent the interests of the Union of Soviet Socialist Republic in all matters relating to foreign trade in the Federal Republic of Germany (article I, section b).

While the trade representation as agent of the state is primarily responsible for the performance of commercial transactions of the U.S.S.R. in the German Federal Republic, it is expressly stated in article v of the annex that the establishment of the Soviet trade representation in the German Federal Republic shall in no way affect the right of natural persons, legal persons and partnerships of the Federal Republic of Germany to maintain direct relations with Soviet foreign trade organizations for the negotiation and fulfillment of trade transactions.

As the U.S.S.R. does not permit trade by private individuals or firms, it follows that in the Federal Republic of Germany nothing but the trade representation permits each state trade enterprises from functioning as Soviet trade organs, and any trade with other Soviet organizations or natural persons is absolutely excluded. Article vii, section I is self-executing, as a specific duty of

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[37]Evans, *Some Aspects of the Problem of Self-Executing Treaties,* PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW, (1951) at 68.

[38]*See:* Riesenfeld, *Commentary on Entscheidung des Finanzgerichts Hamburg vom 29.* October 1969, THE AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 65 (1971) at 549; Russotto, L'application des traités self-executing en droit américain, (Montreux 1969) at 178.

[39]BGHZ 11,138; 17,309; 18,25.

the West German citizens and corporations is evident, namely, to conclude West German/Soviet commercial transactions only with a competent Soviet organization, either the trade representation or an appropriate trade enterprise.

Hence, the public international recognition of the foreign trade monopoly is self-executing and binding upon federal German citizens, legal persons, state organs and courts. The foreign trade monopoly must be considered in all West German/Soviet contracts and is enforceable in the Federal Republic of Germany for all German/Soviet commercial transactions.

3. CONFORMITY OF THE VERTRAGSGESETZ TO THE TRADE AGREEMENT WITH THE FEDERAL GERMAN CONSTITUTION

Unlike the United States, where "all the treaties made . . . under the authority of the United States, shall be the supreme law of the land . . . " (article 6, section 2 of the Constitution), in West Germany the provisions of the trade agreement are federal German law subordinate to the Constitution.[40] As unconstitutional treaty-made law is void, article vii, section I and the annex are either unconstitutional or void. This brings us to an examination of the Vertragsgesetz which arises from the contest of the treaty.[41] The only constitutional right that could be offered by article vii and the annex is the freedom of contract under article ii, section 1 of the German Federal Constitition, which reads as follows:

> Everyone shall have the right to the free development of his personality in so far as he does not violate the rights of others or offend against the Constitutional order or the moral code.

Although article vii, section I and article v of the annex to the trade agreement put in force the foreign trade monopoly and thus restrict freedom of contract insofar as the trade representation and state trade organizations are involved, this does not restrict freedom of contract to such a degree that it is substantially infringed.[42] The principle of the Soviet Russian foreign trade therefore does not conflict with article ii, section I of the Federal German Constitution, consequently it is constitutional and has municipal operativeness for all West German-Soviet Union foreign trade transactions.

IV. The Legal Effect of the Soviet Foreign Trade Monopoly in the German Federal Republic

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[40]BOEHMER, DER VÖLKERRECHTLICHE VERTRAG IM DEUTSCHEN RECHT, (Köln-Berlin 1965) at 66.

[41]BOEHMER, *supra,* note 14, at 73.

[42]BRENSCHEIDT *supra,* note 12, at 104.

[43]MUELLER-STIFFEL-BRÜCHER, DOING BUSINESS IN GERMANY, 6th fully revised edition, (Frankfurt 1971) at 23.

A. The Trade Agreement and German Rules of Conflict of Laws

While the introductory rules of the Civil Code contain only a few incomplete rules with respect to conflict of law questions, it is well settled that contractual relations are governed primarily by the express, implied or presumed intentions of the parties.[43] Obviously a party's autonomy is limited in a qualified sense by laws where application is mandatory.[44]

Thus, it is acknowledged that an international treaty as *lex specialis* prevails over conflict-of-laws rules and therefore over a party's autonomy.[45] Two sources of conflicts of law are found in the trade agreement. First, the commercial treaty limits a party's autonomy with regard to freedom of contract (choice) as foreign commercial transactions must be concluded with the Soviet trade representation or the appropriate foreign trade enterprises. Second, as to the formal validity of transactions of the trade representation, the trade agreement contains in article iii of the annex a *lex specialis* providing that all foreign trade contracts must be signed by two duly authorized persons on behalf of the trade representation.

B. The Trade Agreement as a Rule of Legitimacy of Domestic Legal Acts

The commercial treaty as federal law is binding law—a rule of legitimacy—for domestic purposes. Although article vii, section 1 of the trade agreement can only be interpreted in connection with article v of the annex to the extent that West German/Soviet Russian foreign trade is possible only if the trade representation or a foreign trade organization is the Soviet party, it cannot be alleged that these provisions strictly prohibit any trade with Soviet Russian citizens.

The cardinal point of a prohibition is the conveyance addressed to the subjects of the law to refrain from doing something. Article vii, section 1 and article v of the annex recognized the foreign trade monopoly but have not expressed the prohibition; not every command includes a prohibition.[46] No punishment is prescribed for violation of the foreign trade monopoly. The commercial treaty does not contain typical expressions like "must not" or "is prohibited" which would lead to the conclusion that the citizen has been commanded to refrain from something. A clause which does not contain a prohibition cannot be regarded as a "legal inhibition" within the meaning of article 134 of the Civil Code. The Soviet prohibition of private foreign trade is relevant to article 134 of the Civil Code because within the meaning of article

[44]Sailer, Einige Grundfragen zum Einfluss zwingender Normen, insbesondere der Wirtschaftsgesetzgebung auf die inhaltliche Gültigkeist international-privatrechtlicher Verträge, (Munchen 1969) at 47.

[45]Reithmann, *Internationales Vertragsrecht*, 2. AUFLAGE, (Köln 1972) at 131.

[46]Flume, Allgemeiner Teil des Bürgerlichen Rechts, Band II Das Rechtsgeschäft, (Berlin-Heidelberg-New York 1965) at 343.

134 of the Civil Code "legal inhibition" refers only to a West German, not a foreign, prohibition.[47]

Furthermore, according to article 138, section 1 of the Civil Code, transactions violating "good morals" (*gute Sitten*) are void. It is only a minority view that a wilful act against a foreign statutory prohibition is contrary to "good morals."[48] German courts consider the violation of a foreign statutory prohibition as an act against "good morals" within the meaning of article 138, Civil Code, only if it offends either German interests[49] or interests of general importance common to all nations.[50] Consequently the wilful violation of the Soviet statutory prohibition is not contrary to "good morals" as stated in article 138 of the Civil Code, because the Soviet prohibition of private foreign trade neither protects German interests nor the general interests of all nations.[51]

Finally, the mere violation of the Soviet foreign trade monopoly affects the invalidity of transactions because article vii, section 1 in connection with article v of the annex dictates the consideration of the Soviet foreign trade monopoly for all West German-Soviet commercial transactions. A trade contract between a West German and a Soviet citizen "cannot be concluded," cannot be valid, and so is null and void.

C. West German/Soviet Foreign Trade Contracts

Foreign trade includes trade in goods as much as trade in copyrights,[52] and patents rights and the exchange of commercial and non-commercial services.[53] Under Soviet law the foreign trade monopoly covers all ranges of products in which the Soviet foreign trade corporations deal.[54] All transactions for which the foreign trade organizations are competent belong automatically to the foreign trade monopoly.[55]

As stated above, only the Soviet trade representation and the appropriate foreign trade organizations are competent Soviet trade partners for West German citizens and corporations. While the trade representation has the unlimited right to deal with all ranges of products, the foreign trade organizations are authorized only to engage in contracts in a specified range of products, for which imports and exports they are competent.[56]

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[47]RGZ 102, 108; RGZ 155, 276; Entscheidung des BGH vom 22. Juni 1972, NJW 1972, at 1576.
[48]Mann, Anmerkung zur BGH-Entscheidung vom 22. Juni 1972, NJW 1972 at 2179.
[49]BGH AWD 1961, 102; BGH AWD 1962, 208; BGH LM No. 1 zu § 138 BGB.
[50]OLG Hamburg IPR spr. 1961 Nr. 72 at 243; BGH vom 22. Juni 1972, NJW 1972 at 1576.
[51]BRENSCHEIDT at 125.
[52]LOEBER, URHEBERRECHT DER SOWJETUNION, (Frankfurt-Berlin 1966) at 9, 43.
[53]BOSCH, MEISTBEGÜNSTIGUNG UND STAATSHANDEL, (Berlin 1971) at 47, footnote 4 Nr. 1.
[54]BRENSCHEIDT, *supra,* note 12, at 128.
[55]FREYMUTH, DIE HISTORISCHE ENTWICKLUNG DER ORGANISATIONS-FORMEN DES SOWJETISCHEN AUSSENHANDELS 1917-1961, (Berlin 1963) at 97.
[56]PISAR at 148.

The Soviet Russian foreign trade organizations are accepted in the Federal Republic of Germany as legal persons under Soviet law.[57] As to German law, the capacity of legal persons is determined by the law of the actual center of administration.[58] As the actual center of administration of the Soviet foreign trade corporations is, in any case, in the U.S.S.R., Soviet law determines the legal capacity of the foreign trade organizations. Just as it is accepted in the German Federal Republic that, according to English law, the "power of a registered company" is limited by its "memorandum" and all transactions "beyond the powers" (ultra vires) are void,[59] here the Soviet principle of limited legal capacity has to be considered.[60] The legal capacity of foreign trade enterprises is therefore determined by their governing charters, which expressly define the scope of their business. Foreign trade transactions concluded by a non-competent foreign trade organization are void.

As Soviet law governs the general legal capacity of the foreign trade organization, it determines who are the corporate officers of the organization as well as the extent of their external authority to act and the internal rights and obligations between the organization and its corporate officers. Soviet law governs the scope of their authority and therefore determines the specific manner in which the authority has to be executed.[61]

For example, the principal officer of a foreign trade organization has authority pursuant to its charter so that he is only authorized to conclude contracts in written form. The principal officer of the foreign trade organization cannot represent the foreign trade organization alone, as Soviet rules require the signature of at least two duly authorized officers. Hence, transactions of Soviet foreign trade organizations have to be concluded in written form. Transactions concluded in Moscow have to be signed by the principal officer or his deputy and another person duly authorized to sign contracts.[62] Transactions of the foreign trade organization which are concluded out of Moscow—no matter whether within or beyond the U.S.S.R.—have to be signed by two persons duly authorized by the principal officer.

Non-compliance with the Soviet formal requirements renders the contract of a foreign trade organization null and void.[63]

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[57]Wolff, *Das internationale Privatrecht Deutschlands*, 3. AUFLAGE, (Berlin-Göttingen-Heidelberg 1954) at 116.

[58]MUELLER-STIEFEL-BRÜCHER at 23.

[59]WOLFF at 118 Nr. 3.

[60]Soergel-Kegel, *Kommentar zum Einführungsgesetz zum BGB*, 10. AUFLAGE, (Stuttgart-Berlin-Köln-Mainz 1970) Vor Art. 7 at 80, Nr. 156.

[61]*See:* WOLFF at 118 Nr. 4.

[62]Pisar, *Soviet Conflict Of Laws In International Commercial Transactions*, HARV. L. REV. Vol. 70 (1957) at 652.

[63]PISAR, *supra*, note 62, at 302.

V. Conclusion

I. The recognition de jure of the U.S.S.R. does not include the acceptance of the Soviet Russian foreign trade monopoly.

II. The Soviet Russian foreign trade monopoly is not customary international public law and therefore not through article xxv of the German Federal Constitution a binding constituent part of the German federal law.

III. The German Federal Republic has accepted de jure the Soviet Russian foreign trade monopoly in article vii, section 1 of the trade agreement of 1958 in connection with the annex.

IV. The public international recognition of the foreign trade monopoly is self-executing, binding upon West German natural persons, legal persons, partnerships, administration and courts. The principle of the Soviet Russian foreign trade monopoly—trade only with the competent Soviet organization—has to be considered at all West German/Soviet Russian transactions.

V. Trade with Soviet citizens or incompetent organizations is not prohibited for German citizens, but contracts violating the foreign trade monopoly are null and void.

VI. As West German/Soviet copyright relations are governed by the foreign trade monopoly, the contract between Solzhenitzyn—represented through his lawyer—and Luchterhand Verlag is void. Therefore Luchterhand Verlag did not achieve the copyright of Solzhenitzyn's novel, *August 1914.*