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Several participants, both American and Soviet, expressed the consensus of the conference that further work was needed to clarify arbitration provisions for the better development and expansion of East-West trade. They expressed the belief that the Soviet Foreign Trade Arbitration Commission and the American Arbitration Association should participate in whatever group was eventually assigned to this question, but it was generally agreed upon that the corporation of jurists from the two countries should continue.

Mr. Lebedev and a U.S. participant both questioned the feasibility of the suggestion of Mr. Holtzmann that the arbitrator participate in a dispute from the inçeption, so that performance of the contract need not be halted pending a formal resolution. Mr. Holtzmann suggested that the guidelines for such arbitral decisions be spelled out in the contract.

A U.S. participant observed that this function would call for a new type of arbitrator, more like a labor mediator than the traditional international commercial arbitrator. In response to a question from another U.S. participant, Mr. Lebedev pointed out that the rules of the Foreign Trade Arbitration Commission did not provide for such a mediator, and Soviet practice did not envisage conciliation.

A U.S. participant observed that there was a pathology of disputes in long-term contracts; that once disputes arose minor disputes escalated into progressively more serious disagreements until the contract fell apart. He asked what type of arbitration would be a good arrangement for such circumstances.

Mr. Holtzmann replied that it was in these circumstances that independent experts should be called in to diagnose the problem and suggest remedies.

A Soviet participant objected to the principle that the opinion of an expert should be superior to that of an arbitrator.

Mr. Lebedev pointed out that it was a principle of Soviet law, applied both in courts and in arbitration proceedings, that the opinion of an expert be given no greater weight than any other type of evidence. He further noted that the evidence of the original expert carries no greater weight than that of experts subsequently brought into the proceedings.

A Soviet participant traced the authority of that principle to Article 19 of the Civil Law. Mr. Holtzmann pointed out that the same principle governed the situation under general U.S. law, but that the parties could, under freedom of contract, indicate that special weight be granted to certain types of evidence. A Soviet participant, how-

ever, replied by citing arbitration cases which showed a predisposition on the part of Soviet arbitrators to minimize the importance of expert testimony by consulting additional experts of the arbitrator's choice or by averaging the difference in experts' estimates.

Mr. Lebedev concluded the discussion by stating an agreement of principle between the American and Soviet participants that Article 7 of the Soviet-American Trade Agreement of 1972 was not mandatory, and that parties were free to agree to other specifics of arbitration, such as rules and fora.