

Chess-Like Diplomacy at Novo-Ogarevo

An Eyewitness Account to the Drafting of the USSR Union Treaty of 1991

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The processes taking place today in the Russian Federation bring to mind Novo-Ogarevo, the small country town where in 1991 the new Union Treaty among those wishing to preserve some kind of a Union was being prepared.

Those developments are indeed very instructive, especially considering that many of the participants in those negotiations still remain on the political stage of Russia and the other republics of the former Soviet Union.

The disputes which took place there sometimes were, in reality, a rather subtle game—sometimes improvisations, sometimes flagrant setups. That is, a kind of political chess game.

It is interesting to look at how such games were played. And they were very intense, even at the last meeting before the signing of the Treaty, which was scheduled for August.

Tuesday, 23 July 1991. The day was muggy, with intermittent rain showers. Starting at 1:30 pm, the approaching car tires could be heard—from armored ZILs to ordinary black Volgas, and even a rather nice minibus. They brought to Novo-Ogarevo the leaders of the republics, who attended this meeting in a new capacity—as heads of plenipotentiary delegations. In this regard, Mikhail Gorbachev joked while opening the meeting that the new capacity of the leaders should lead to a different quality of work and, accordingly, of results. Also present were Anatoly Lukyanov,¹ Ivan Laptev,² Rafik Nishanov,³ Valentin Pavlov,⁴ Dmitry Yazov,⁵ Alexander Bessmertnykh⁶ and Vladimir Shcherbakov.⁷

As usual, the press was admitted for five minutes, after which the most enduring of them went to pass the time in a small hotel, awaiting the evening break and the already traditional night-time presidential press conference.

The task at hand was the resolution of five questions of which the republics had made substantial comments and proposals: 1) membership in the Union, 2) the Union budget and taxes, 3) property, 4) the USSR Supreme Soviet and 5) the USSR Constitutional Court.

All the participants had received in advance specially prepared documents: the text of the Treaty with proposals for possible amendments, as well as reference materials on practices for budget formulation in foreign federal states, information

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about banking systems and a legal analysis of the draft made by the Constitutional Compliance Committee of the USSR.

The president of the USSR made a short overview of the comments and proposals received from the republics and said:

—“First, I see that a tendency has developed among us: here we are talking to each other and we seem to come to an agreement, but when we part we start to tear down what we have agreed upon. Perhaps someone is not expressing himself frankly and completely. Now the time has come for absolute clarity. I ask all of you to take some position and to define it precisely. I also ask you to get together and coordinate these positions. If we are unable to come to an agreement regarding the Treaty, then the consensus which we have attained with such difficulty will also be destroyed.

“Second, we must confirm our commitment to the Union of Sovereign States as a federation. Attempts by some comrades to adjust the draft to, so to say, a weak federation will cost the country dearly.

“Third, while constructing this Treaty we should have in mind, first of all, the fate of the Russian Federation. Its fate to a great extent will determine that of the Union. Therefore, I repeat once again: there cannot be a double standard—a strong Russian Federation is the foundation for a strong Union federation. I see how anxious the Russian comrades are about the RSFSR, how they are doing everything possible to make this federation alive and functioning, with real power. I support this position. But I want Russia to support the Union federation as well, clearly and without reservation.

“Fourth, I appeal to all the union republics not to oppose the Treaty provisions providing sovereignty for the former autonomies. At the same time, I appeal to the autonomies to understand what the Russian Federation is. We have to find a harmonious solution.

“I do not know, comrades, whether you have realized it or not, but I already perceive some dangerous trends. We need to finalize the Treaty as quickly as possible. Quickly! . . .”

The president is in a hurry. In a moment, a situation will emerge in which he will have to choose between the legal quality of the Treaty and political necessity. He understands that the editorial formulations proposed, for instance, by the Constitutional Compliance Committee are much more precise than those formulated and discussed orally by government officials who, though they may be prominent, in their discussions they do not go beyond the level of a student seminar on basic law. The formulations according to which, allegedly, birds migrating from Central Asia to Russia illegally alienate the property of one sovereign republic in favor of another. He understands, but . . .

—“Mikhail Sergeevich, I just would like to ask one question.” Uzbekistan's Islam Karimov's voice expresses genuine indignation, and everyone is listening with interest, because it is unclear where he is headed (the discussion has not yet started). “On the 18th of this month in this hall, we agreed upon and accepted as a foundation the document which was signed by you and sent to the republics. And what is going

on now? Where did the document later sent to us for today's discussion come from?" —"What do you mean 'from where'?" Gorbachev responded with surprise. He was surprised because the procedure of preparation and discussion was exactly the same as previously: first, an agreed-upon text, then a general overview of comments made by the republics and, finally, a text for discussion with underlined amendments and proposed revisions. Otherwise, it would be impossible in principle to discuss in one day several hundred comments. Besides, it is ridiculous to waste politicians' time on technicalities, even juridical technicalities. "From where?," Gorbachev continued, "You remember—I was personally entrusted, as always, to consider the comments and send to you . . ."

—"In this case, Mikhail Sergeevich, I beg your pardon, but I must tell you frankly: last time we argued for a good hour over every line in the text; we made a kind of document which brought us closer to each other. And now a new one has appeared. I do not intend to dwell upon specific points, but do make sure for yourself, I have here marked in red ink what is absent in the comments by the republics. And therefore I propose to set this text aside, and take the version of the 17th."

—"Well, okay, okay . . . Let us put aside everything we have and return to the version of the 17th."

Thus, by his first move Karimov put the chess figures of the republics in an active position, and the Center, in the person of Gorbachev, the Constitutional Compliance Committee, the experts and others, in the position of listeners. Simultaneously, the same move resulted in the loss of scores of other proposals by the republics, which had been considered in the rejected version, but would not be handled anymore, neither today, July 23, nor later. The juridical quality of the draft was lost as well. In this sense, Gorbachev's joke about the quality of work proved to be prophetic (or rather ominous, because he meant something quite different).

—"Well, let us begin. Only—attention, please, no peripheral debates," said the Soviet president.

Doku Zavgayev speaks:

—"We have been saying: maximum rights to the Union republics. And perhaps this is right. We need strong republics. But first of all we need a strong Union—a federal state. We are moving toward the market and intend to join the world economic community. How can we join with an amorphous Union state which strong republics can sway to and fro at will?"

"Now concerning the Russian Federation. We all are in favor, with both hands raised. We are committed Russian citizens and will never allow the collapse of the Russian Federation. But it is essential to have a real federation, not like that conceived in the draft of the so-called Federation Treaty, prepared by the Russian Parliament. It provides for division of powers, but not a word about federation."

This subject is picked up by Mikhail Nikolayev.⁸

—"Already a year ago, the former autonomous republics without any prompting came out in favor of preservation of the Russian state. And it is not clear to me, Mikhail Sergeevich, why you, in the course of the last two or three meetings, have constantly reminded us about that. The Russian Federation has been, is and will

continue to be. But the question is how to regulate relations between states, one of which is a part of the other? The draft says: ‘. . . (they) are regulated by treaties between them and by the constitution of the state of which they are a part.’ The latter provision has a double meaning—that is, which state? For myself, I understand this to be the Union. In this case, we agree.”

Now an argument flares up, which will last several hours. If the reader were to try to follow its real course, then, in the first place, his mind would quite soon be reeling from the cyclic repetition of moves; and secondly, at times the argument would create the impression of something beyond reality, something metaphysical (“And what will Academician Vladimir Kudryavtsev⁹ say?,” “I think, Mikhail Sergeevich, that it is important for you to reach an agreement on any option. Because rearranging the words will change nothing. This is not essential for the powers, what is more important is the final result. And the final result is two types of documents—the Constitution and the Treaty. They could be finalized in any order”). Although experts in political intricacies see behind legal texts many things of which the uninitiated could not even guess (Gorbachev: “We are dealing with the greatest, most delicate matter and a very complicated situation. It is not so easy to encompass it with a simple and clear formula. In one case, there are certain dangers, in another, others, and in a third case, something else. And the goal is to find a formula by which all the dangers would be removed”). So that this confusing situation will not make the reader lose his way in broad daylight,¹⁰ let us present all of the diplomatic maneuvering in a kind of diagram.

The situation is as follows. There are three types of states:

- 1) the Union;
- 2) a state belonging to the Union and forming an integral part thereof (formerly designated by the term “Union republic”);
- 3) a state belonging the Union, but forming a part of another state within the Union (former autonomous republics within Union republics).

The question is: How to regulate relations between a former autonomy and the republic of which it is a part?

Possible options:

- a) a treaty (agreement);
- b) the constitution of the republic (former autonomy);
- c) the constitution of the republic of which the former autonomy is a part;
- d) the Constitution of the USSR.

The necessity of having a special treaty or agreement was denied by no one. The argument centered around the three possible combinations (“three trees” in our terminology).

1) “Tree No. 1”: a treaty (agreement) + the constitution of the republic to which the former autonomy belongs.

2) “Tree No. 2”: a treaty (agreement) + the constitutions of both republics + the Constitution of the USSR.

3) “Tree No. 3”: a treaty (agreement) + the Constitution of the USSR.

So, as we remember, Nikolayev had interpreted in his own way the vague wording of the draft: “. . . treaties between them and the constitution of the state of which they are a part,” and made a choice between Tree No. 1 and Tree No. 3 in favor of the latter.

The first move: Tree No. 1 → Tree No. 3 (the numbering here and throughout is, of course, the author's).

The second move is made by Azarbek Galazov¹¹: he proposes to lop off the trees, by keeping only treaties and agreements, and, in case it is impossible to do without any constitutions, to designate the Constitution of the USSR (Tree No. 3).

The third move is by Nurtaza Rakhimov¹²: to support No. 3.

Attention! Now Yeltsin,¹³ with the fourth move:

—“We have not agreed upon this point”; he insists on No. 1.

By the fifth move Karimov indirectly supports Yeltsin:

—“The Constitution of the USSR must not be included—this strongly limits the self-government of the Union republics.” No. 3 is rejected.

Nishanov—the sixth move: he supports Galazov's lopped-off formulation (second move). Both No. 1 and No. 3 are rejected.

The first round of conflict between No. 1 and No. 3 ends in a draw. The second round is opened by Gorbachev—the seventh move:

—“I see that some comrades have an allergy to the Union, but it should not be expressed so openly. The task at hand is to make a document which would form the basis for a renovated federation. Therefore, it is not worthwhile to demonstrate disdain for the Union Constitution. There certainly will be a constitution after the signing of the Treaty, because all the entities represented here—except Armenia—have come out in favor of a federation. Therefore, we should bring it about with clear formulations, and not pull the blanket to the side which is opposite to the declared will of the people. You know that I am an advocate of drastic departure from unitarism, in order to provide oxygen for freedom. But this does not mean that we have to go to the other extreme. Already the present draft is criticized for tearing the country apart. But it seems to me to be distinguished by the very fact that therein is found the maximum limit of freedom, beyond which is collapse. Therefore, disregard for the Constitution of the USSR is inadmissible!” A springboard for moving to No. 3 is prepared.

The way to it is obstructed by Ivan Plushch¹⁴:

—“. . . and for the constitutions of the republics as well!” He argues for this eighth move energetically but absurdly: “. . . because a constitution is an internationally recognized document, it is a bearer of international law, while treaties and agreements are not recognized as international.”

Somewhat confused, the heads of the plenipotentiary delegations neither object, nor agree. Taking advantage of the pause, Yeltsin makes the ninth move:

—“. . . by the constitution of the state of which it is a part, and the Constitution of the USSR”—a combination of options No. 1 and No. 3.

However, this situation does not satisfy the former Russian autonomies, and Rakhimov, in the tenth move—a very sharp detour—rejects the new Yeltsin version:

—“In such a way, Mikhail Sergeevich, we won't resolve a single question today. Many of those present here really do wish to break up the Union. Why do we respect the truly hard-won declarations of sovereignty adopted by the Union republics, but refuse to respect the declarations of the former autonomies? Why then are we gathered together? Why are we playing cat-and-mouse? Let the 'nine,' then, stay here and work out their problems. Moreover, some people think it degrading to sit at the same table with us. This attitude is especially manifest on the part of the delegation . . .”

At this point Gorbachev politely interrupts him, aware of what might follow such accusations.

—“Please, don't use that tone, comrade Rakhimov. The reformation of the Union is a very complicated business. We have had a unitary state, and now we wish to create something which is hard to grasp: who will deal with whom, who is subordinate to whom and so on. Personality conflicts, someone's ambitions may act up . . . This is inadmissible, because we are discussing the fate of our state. Viktor Stepanov,¹⁵ the floor is yours. Then comrade Leontiev.”

The eleventh move. For the first time the discussion goes beyond wavering between Trees 1 and 3. Stepanov precisely formulates No. 2.

The twelfth move is made by Gorbachev himself:

—“I personally do not object to mentioning all the constitutions. I would support that.”

A chorus of voices follows: “That's right!” . . . “Let's go with that option” . . . “Everyone is in favor . . .”

However, it is too early to celebrate the victory. Yeltsin does not take part in the arguments, speaks briefly, but throws in his wordings at tactically propitious moments. He makes the key move of the second round. As befits No. 13, the move explodes the almost complete consensus:

—“It would be better, in any case, to regulate relations by treaties, without any constitutions.”

All three Trees get razed almost to the ground, only “Stumps” are left. Voices: “That's right!,” “Very good!,” “Let us support . . .”

Lukyanov, long silent, enters the diplomatic game by making the fourteenth move and . . . takes the side of Yeltsin?!

The fifteenth move. Vladislav Zotov:

—“Boris Nikolaevich has spoken very well. We should support him.”

The sixteenth. Stepanov:

—“We support the proposal of Boris Nikolaevich.”

In principle, this wording is not very acceptable for Yeltsin, who, by sacrificing quality, has cut down Gorbachev's option. But it is still less acceptable for Gorbachev, who is striving to establish the Constitution of the USSR as a powerful instrument. Therefore, it is he who opens the third round of the struggle. Besides, while Yeltsin needs option No. 1, Gorbachev would be satisfied by either No. 2 or No. 3. He has a wider range for maneuvering. So, the seventeenth move:

—“Wait, wait, don't be in such a hurry . . . On the basis of the Union Treaty we will

have a new Constitution. In the republics as well. Therefore, to more fully and precisely encompass all the nuances of our unique country, it would be better to provide for treaties, the constitutions of the republics and the Union Constitution.”

As usual, there are voices in support of option No. 2 as well. But for Gorbachev, that is completely insufficient. He tries to persuade Yeltsin:

—“Boris Nikolaevich, since we are going to form a Union, its Constitution should be reflected one way or another.”

Yeltsin keeps silent. If so desired, his silence could be interpreted as a sign of consent. The Soviet president repeats once again formulation No. 2. The eighteenth move immediately follows. Its author is Lukyanov. This time he supports Gorbachev:

—“This should be accepted. Yes!”

The nineteenth move by Ayaz Mutalibov¹⁶ (“I support the wording!”) seems to strengthen the position of the USSR president, but Mutalibov makes an unexpected pass to the side:

—“Our legal experts classify the situation as follows. Treaties and agreements were characteristic of the Russian Federation in the period of its birth. But other republics like ours, unitary states, are guided by their constitutions. And here the contradiction arises, which is built in the right of the republics which constitute the Union to independently determine their national and territorial structure. Where is this independence now? It will run contrary to the constitutions of those entities which form them. What are we doing? Today we are all sitting here, but tomorrow we'll be gone. And those who come after us will curse us because we are ruining the Union of 1922.”

The pass is received by Karimov, who with the twentieth move drives the discussion even further away:

—“I wonder why the four new, recently proclaimed republics are not represented here?”

—“Are you proposing that we postpone today's work?” With his favorite tactic, Gorbachev tries to confuse his adversary and then to push the discussion in the necessary direction.

—“I'm just saying that new subjects may keep appearing forever.”

—“Certainly, certainly . . . But our Treaty is open, and anyone may join it . . .”

—“Such a position will result in a chain reaction in every republic. And forgive me, but answer this question: will there be an end to that?,” Karimov harks back.

—“Well, time will tell,” someone's rejoinder is heard.

It is already clear that the discussion has gone beyond the limits of an argument and is turning into a stream of consciousness: future generations, the Fatherland, double standards, the meeting of CSCE experts in Geneva, mutiny on board a ship . . .

Ardzinba¹⁷ salvaged the situation with the twenty-first move—a cry of despair:

—“Please, let us move forward. Adopt any of the wordings—the one that suits you best, and let us go on. I am pleading with you. Any version. So many have been proposed, and none of them fits. This cannot be, please, understand . . .”

The third round also ended with nothing: any version means no version. Who is the next to begin? Again a new figure, who had not yet made a move, but a very strong one. Nursultan Nazarbayev,¹⁸ the twenty-second move:

—“Last time we discussed the draft. Then we brought it to the parliaments of the republics. The parliaments pronounced their decisions. And now we are breaking each other's hands. How can I change the decision of the Supreme Soviet?” A brief speech follows, about the position of Kazakhstan, about how many times they have agreed to compromise, about the preservation of Russia, the procedure for signing the Treaty and, suddenly, a sharp turn: “Anyway, if Russia and the other republics with autonomies agree, it would be possible to adopt the wording: ‘regulated by treaties or agreements and the Constitution of the USSR.’”

That would be Tree No .3! Gorbachev steps in softly, knocking on wood:

—“This is the Union. As you are going to put down . . .”

Vain hopes! Nazarbayev is carried away by his own reasoning:

—“But one state belongs to the other, and they both, to the Union. Then we must put it down in exactly the same way in relation to the Union. Let us logically carry the thought through to the end. Since there are agreements, let us have agreements with the Union as well. Period, nothing else.”

A truncated version—stumps. The Soviet president stubbornly tries to go back half a move, to the so rapidly vanished third option, or at least the second.

—“The objective political fabric with which we are dealing is very contradictory. And untangling these contradictions is a kind of art. I am prepared to mention the Constitution of the USSR, or all the constitutions—as you deem necessary . . .”

He is interrupted by several voices, and with the twenty-third move, the negotiations are brought back to Yeltsin's thirteenth move:

—“Let us have it as Boris Nikolaevich proposed: treaties and agreements. Period.”

Stumps, again stumps . . . Nazarbayev has just brought the matter to this. But in this case no agreement can be expected.

—“Boris Nikolaevich agrees. But Ayaz Niyazovich [Mutalibov] and others do not.”

—“Then maybe it is possible to put it this way: treaties and agreements which do not contradict the Constitution of the USSR.”

—“This is completely bad,”—Nazarbayev, who started the fourth round, is the one who ends it. Without any results.

The next, fifth round is started by an experienced warrior—Lukyanov. His twenty-fourth move, taking into account a certain legal scholasticism of the argument, is simple to the point of genius:

—“We should pay heed to what was said by both Ayaz Niyazovich and Boris Nikolaevich. Why not put it this way: ‘. . . regulated by their constitutions, the Constitution of the Union and relevant treaties and agreements?’”

By his method of turning the Trees over, he made it difficult to cut them down to stumps.

—“We have already discussed this option”—Gorbachev did not immediately grasp the idea.

—“But that gives us the chance that it may not be necessary to conclude any treaties

or agreements.”

—“Did you get it, Nursultan Abishevich?”—Gorbachev immediately joined in. “Constitutions are set up as cornerstones. Boris Nikolaevich! The Constitution operates, there is no way around it, and all the rest is second priority.”

But Nazarbayev and Yeltsin remain silent, evidently strenuously calculating what will follow this casuistic turn, probably made purposefully by a doctor of statesmanship experienced in dealing with parliamentary juridical labyrinths. The others also fell silent. For some time, Gorbachev was compelled to exchange short remarks with Lukyanov, until one of the participants, Bagrov,¹⁹ got ready for the next move—already the twenty-fifth:

—“It seems to me that the proposal by Anatoly Ivanovich is very appropriate. I, for one, support it.”

Unfortunately, in the upside-down condition, Tree No. 2 proved to be even less stable than in the normal one. Nazarbayev, it seems, decided to test Lukyanov's option against his previous logical construction, but the inverted formula would not yield. Gorbachev addressed himself to his adviser, Academician Kudryavtsev, and the latter confirmed that Lukyanov's proposal was quite acceptable (as, for that matter, was any other). Many, interrupting each other, rushed to second the wording of the chairman of the Supreme Soviet of the USSR. However, Nazarbayev's internal logic had already led him to the theme of a strong federal state. Perhaps he would have succeeded in returning to our three Trees, but Rakhimov suddenly took offense at something:

—“Mikhail Sergeevich, again a disrespectful attitude is appearing . . . Nursultan Abishevich has said that the autonomies are breaking up the Union and Russia. I completely disagree with this . . .”

—“I never used that expression,” indignantly protested Nazarbayev.

It was all over. Although Gorbachev managed to calm the passionate outbursts, it was necessary to start over from the beginning.

The sixth round was opened by Karimov. His twenty-sixth move was at first unclear:

—“Mikhail Sergeevich, we are now seeking a compromise. But then let us look at the problem from two sides. We can put it down any way we like, but let us make it clear. There are republics which include other republics, and those which are included. That is, those which take in and those which are taken in—forgive me for the expression, so no one will feel hurt again. These two notions do exist—how can we depart from reality? But let us then recognize the priority of the republic which takes in the other . . . I beg comrade Rakhimov not to get excited. Comrade Nazarbayev and myself have a special respect for you, please note that. We have friendly relations with you, and there is no need to get hurt. What is a Treaty? It is the delegation of powers to the Union. And the Russian Federation, by signing the Treaty, does not in any way weaken itself. The same is true for the former autonomies. Therefore, I strongly appeal to you either to stop on treaties and agreements, or to accept the proposal by Lukyanov. All right, Mikhail Sergeevich, I will go against myself—let us keep treaties and agreements plus the Constitution of the USSR!”

A three-pronged fork for the beginning. There is still space for maneuvering: the well-known stumps, Lukyanov's upside-down version and the classic No 3. The two latter options satisfy the president. There is no lack of exclamations: “Right! We accept!” and all.

Nazarbayev thoughtfully repeats after Karimov: —“. . . by agreements and the Constitution of the USSR.” If so desired, this could be construed as a choice combining the three options. In the hope of preserving the emerging consensus, Gorbachev adjourns the meeting. There you have it—chess-like diplomacy!

This was just one episode in the prolonged work—“chess-like,” so to say, on the draft of the Union Treaty. How many more of them there were—dramatic in style, full of humor, cautiously official and amicably informal. To get an idea of the whole picture, one must read about them as well. That means someone has to write about them. Well, there will be no problem finding an author . . .

Notes

¹ Chairman of the USSR Supreme Soviet.

² Chairman of the Soviet of the Union of the USSR Supreme Soviet, and one-time editor of *Izvestiya*.

³ Chairman of the Soviet of Nationalities of the USSR Supreme Soviet. He had also been head of Uzbek Communist Party (1988-1989).

⁴ Chairman of the USSR Cabinet of Ministers, one of the coup plotters in August 1991.

⁵ USSR minister of Defense, and a coup plotter.

⁶ USSR minister of Foreign Affairs.

⁷ USSR deputy primeminister.

⁸ Chairman of the Supreme Soviet of Yakutia.

⁹ USSR people's deputy, academician, jurist and advisor to Gorbachev.

¹⁰ The Russian expression used here is to “get lost in three pine trees.” This analogy will figure prominently in the rest of the article.

¹¹ Chairman of the Supreme Soviet of North Ossetia.

¹² Chairman of the Supreme Soviet of Bashkiria.

¹³ Yeltsin had recently become the first popularly elected president of Russia (RSFSR).

¹⁴ First deputy secretary of the Ukrainian Supreme Soviet.

¹⁵ USSR people's deputy.

¹⁶ President of Azerbaijan.

¹⁷ Chairman of the Supreme Soviet of Abkhazia.

¹⁸ President of Kazakhstan.

¹⁹ Chairman of the Supreme Soviet of Crimea.