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# Arbitration Battle: Back to the Future

## Moot Case

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**Russian  
Arbitration  
Center**

at Russian  
Institute  
of Modern  
Arbitration

*The events described in the Case are fictional and partially reflect historical events*



In the sixteenth century, the great prince (knyaz) of Moscow, Tsar of all Rus', was Ivan IV Vasilyevich, by name the Terrible. The time of his reign was marked by a stern resolve and diverse reformations. Rus' strengthened its position and expanded the borders not only by the might of arms but also through wise deeds in the realm of trade and dealings with foreign lands. Ivan IV, a monarch of great will and power, spared no toil in his efforts to uphold and further nurture the commercial relations with foreign states.

The growth of trade did also aid in the rise of methods for resolving disputes, such as arbitration. Merchants in making their trade agreements did oftentimes stipulate that disputes betwixt the parties should be settled through the choosing of "three learned men," or else by consuls selected from amongst the merchants. This advancement in arbitration did lead to the founding and strengthening of arbitration unions, through whose assistance trade disputes were resolved.

'Twas thus: with Europe, especially with the Holy Roman Empire and the Commonwealth of Poland, Rus' did foster lively trade through the lands of the common folk, as well as through the ports of Novgorod and Archangelsk. The European merchants did bring unto Rus' metals, cloths, wine, and sundry wares, and in return did receive from Rus' furs, grain, and crafts of the hand. With the Ottoman Empire, Rus' did maintain trade links across the Black Sea, which brought with it an exchange of goods diverse: grain, furs, arms, and spices.

Trade with Asia, especially with the Khivan and Bukhara Khanates, as well as with India, was an important part of Rus' foreign policy. Since ancient times, the eastern trade routes had gone across the Caspian Sea find by Volga River, along which goods from distant lands did arrive, such as silk, spices, jewels, and porcelain, while Rus' did send in return furs, honey, wax, and other gifts.



Trade with Asia did aid in the exchange of knowledge, which did greatly influence the growth of Rus' culture and economy.

Betwixt the Khivan and Bukhara Khanates did lay the realm of Shaharat, a kingdom small in size, yet mighty in strength. The lands of Shaharat were renowned not only for their fertility and riches but also for their prime location, strategically placed upon the trade routes that did link the East with the West. Shaharat became known as a center of commerce and cultural exchange. The technologies of the East did mingle with the arts of the Europeans, and science and crafts did flourish in that kingdom, small yet proud. The masters of Shaharat did craft fine cloths, jeweled works, and rare spices, which found demand across the wide world.

Notwithstanding the lively trade 'twixt the realm of Shaharat and Rus', soon did goods from Shaharat begin to flood the markets of Moscow, Novgorod, and other Rus' cities. And the merchants of Rus' did see how these wares became more plentiful, overshadowing their own products, and their profits began to shrink. In confusion and concern for their futures, the merchants of Rus' did begin to complain, fearing that the overwhelming flow of foreign goods might bring ruin to their crafts and trade. And lo, for the more the goods of Shaharat did prevail, the harder it became for traders of Rus' to peddle their own wares.

In this regard, on fifteenth March in the year 1559, great prince (knyaz) of Moscow, Tsar of all Rus', Ivan IV the Terrible did issue a decree "On Trade Restrictions with Shaharat," hereafter to be known as the Decree, which did impose prohibition upon great merchants of Shaharat who traded in Rus'. These measures were aimed at strengthening the internal economy and protecting the Rus' merchants.

The Decree contained the following:



*“The Decree of His Majesty,  
Tsar and Great Prince (knyaz) of Moscow and all Rus’,  
Ioan Vasilyevich,*

*This Decree is issued to strengthen the economy and trade of Rus’, as well as to protect the welfare of the Rus’ merchants. Let it be known to all who hear thereof, and let our command be fulfilled.*

*Let it be made known to all merchants of Rus' that from henceforth, it is forbidden to have trade dealings with traders of Shaharat.*

*Any disputes and matters with merchants who violate this command shall not be entertained upon the lands of Rus’.*

*It is hereby ordered that this Decree shall take effect immediately, without delay, and the observance of this command is strictly entrusted to all.*

*Such is my command, that all of Rus’ must abide by this Decree without hesitation.”*

Long before the issuing of the Decree and the shifting political landscape of Rus’, a great mercantile venture in Shaharat, named *“The Sultan’s Gifts,”* did reach an accord concluded for a century with the greatest trading house in Novgorod, called *“Northern Tales.”* In this accord, it was agreed that fine cloths and rare spices from Shaharat should be delivered to the Rus’ land.

The payment was to be made as follows:

*“The Novgorod trading house “Northern Tales” shall, seven days prior to the delivery of goods by the merchants of the Shaharat trading house “Sultan's Gifts,” provide a deposit; the remaining portion of the payment is to be made within seven days following the delivery of the goods by the traders of both trading houses.*





*These conditions shall be upheld by the Parties under all circumstances, and no changes to the payment terms shall be permitted, unless agreed upon by both Parties.”*

This Accord had within it an arbitration clause of the Moscovian Arbitration Chamber, now known as the Russian Arbitration Center (the Arbitration Rules of the Moscovian Arbitration Chamber are *in pari materia* to the Arbitration Rules 2021 of the Russian Arbitration Center):

*“Let any discord, debate, or claim arising from this Accord, and concerning it, be it in breach, making, changing, ending, or of nullity, be resolved by arbitration in the Moscovian Arbitration Chamber, according to its prevailing rules.*

*Disputes shall be resolved by three consuls. One shall be chosen from among Rus’ traders, and another from among Shakharat traders. The chair shall be chosen by both consuls, and he must be knowledgeable of the laws of both Rus’ and Shakharat, that he may justly arbitrate these disputes.*

*The law governing this trade Accord shall be the substantive law of Shahrarat.*

*The seat of arbitration shall be the Khanate of Astrakhan, which is an impartial realm to both sides, where all disputes and disagreements shall be resolved in accordance with this trade Accord.*

*The parties bind themselves to willingly perform the arbitral award, and let none withdraw or defy the command of the arbiters.”*

The trade betwixt the houses of “*The Sultan’s Gifts*” and “*Northern Tales*” did prosper greatly, and both sides did earn abundant wealth from this accord.

But behold, upon the issuing of the Decree, there arose a grievous dispute between them.





On the first day of February in the year 1559 the Novgorod merchants, as was agreed by the accord, did pay a down payment for the Shaharat goods, which were delivered on the eighth day of March. Though the terms of the accord were plain and remuneration was obligatory, the Novgorod merchants did withhold the remuneration, citing the enactment of the Decree. This did cause great displeasure among the merchants of “*The Sultan's Gifts*,” and led to the need to seek the judgment of the consuls to settle the quarrel.

The Shaharat trading house “*The Sultan's Gifts*” did demand that the place of dispute should be moved to another land. Many years Rus’ held fluctuating bonds of diplomacy and commerce with the Astrakhan Khanate, a successor State of the Golden Horde. Their dealings were marked by both trade and conflict of arms, yet in the 16th century, the rise of mighty Moscow, led by Ivan the Terrible, did bring a shift in this course of events.

Ere the Decree, Ivan IV had already taken mighty strides to curb the sway of the Khanates in that region. In the year of 1556, the Astrakhan Khanate, long a source of turmoil along the southern borders of Rus’, was by Ivan IV’s martial campaigns brought under the dominion of Rus’. This event did mark a pivotal turn in the political tapestry of Eastern Europe. The Khanate’s defeat did sorely weaken its strength, and soon the lands were claimed and made part of the growing Rus’.

After its conquest, Astrakhan Khanate, ceased to be an independent realm, for it became as naught but a part of Rus’. The once-mighty Khanate lost its freedom, its sway undone, and was made subject to a system that did operate beneath Moscow’s sovereign hand. The local lords were either eliminated or made to bend in humble submission, and the Khanate’s former place as a merchant and political power did dwindle greatly.





Shaharat trading house demanded that a seat should be moved to the Kingdom of England or China, so as to exclude any influence of the Decree of Tsar Ivan IV. Moreover, “*The Sultan’s Gifts*” did believe that the consuls had the inherent power to alter the place of arbitration, to secure the right of the Shaharat enterprise to a fair hearing.

Yet, the merchants of “*Northern Tales*” were against the change of the place and did allude to *pacta sunt servanda* principle. And even should the place of dispute be shifted by three consuls, the provisions of the Sovereign’s Decree must still be upheld, for they were inexorable, and now known as imperative.

With intent to resolve this dispute, as was decreed in the arbitration clause, the Parties did choose consuls from among the merchants, one of whom was from Shaharat, and the other from Rus’. As for the chairperson, they did choose a consul who knew the ways of both lands, for he had lived many years in both Shaharat and Rus’. During long deliberations, the Parties did agree upon the manner of arbitration, and they did set the hearing of the matter for the fourteenth day of May to decide on the following issues:

*A. Whether the consuls had the inherent power to alter the place of arbitration and if so, whether the place of arbitration should be so altered;*

*B. Whether the Sovereign’s Decree must be upheld even if three consuls hold that the place of dispute should be shifted.*

