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Soviet international law : theory and practice

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SOVIET INTERNATIONAL LAW

Theory and Practice

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CHAPTER I

THE SOVIET UNION AND INTERNATIONAL LAW

After World War II, the Union of Soviet Socialist Republics became a "Great Power," surpassed in might by only the United States. The foreign policy of the Soviet Union now exerts a tremendous influence on the international scene, making the study of Soviet policies a "must" for the student of international affairs. The question of the role of international law in the foreign relations of the U.S.S.R. is an interesting and important one. Are changes in the international system reflected in Soviet views of international law? Have the Soviet theories had significant impacts on the actions of other states? To what extent does international law influence Soviet actions and vice versa? This paper will answer these questions by considering some aspects of Soviet trends in international law in recent years.

This study, because of the vastness of the subject, is not comprehensive. The emphasis is on public international law, concerned with governmental relations, private international law being only occasionally mentioned where it seemed appropriate. This can be justified by the relative unimportance of private transactions in relations with the Soviet Union due to the restricted nature of individual contacts with the Soviet Union. Trade relations and

economic aspects of Soviet international law are also considered only when pertinent to general trends in an area being considered. Otherwise, the study is composed of topics on which Soviet interpretations of international law exert influence on policies or describe the reasons for Soviet action. Treaties, international organizations, customary law, law influencing relations with the "Third World," and, finally, the international law of socialist countries are discussed.

A brief examination of the nature of international law is helpful in understanding the Soviet interpretations. What is the definition of international law and what is its role in international law and what is its role in international affairs? The official Soviet definition is as follows:

> International law can be defined as the aggregate of rules governing relations between States in the process of their conflict and co-operation, designed to safeguard their peaceful coexistence, expressing the will of the ruling classes of these States and defended in case of need by coercion applied by States individually or collectively.[1]

This statement has phrases of high ideological content ("peaceful coexistence" and "ruling classes"), yet it points out some of the distinguishing features of international law.

First, international law is a relatively loose "aggregate of rules," not a formal system of law as can be found in a

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[1]International Law, Academy of Sciences of the U.S.S.R., Institute of State and Law (Moscow: Foreign Languages Publishing House, 1963) p. 7.

national government. There is no central authority defining the law and enforcing it. Some students of international relations assert that international law does not really qualify as law at all, and that it has little relevance in regulating the actions of states. This view is as biased as one which sees international law as the key to a utopian world in the future. In reality, the bulk of international law concerns the regulation of non-controversial routine transactions among the states, acting to formalize these relationships. One aim of international law is to control the behaviour of nations. This is the most controversial of its functions. It is the occasional failure of this function in times of crisis that leads some to believe that international law is of little value. These persons do not realize the number of crises avoided because states obeyed the law.

A second element, following from the first, is the consensual nature of law in the international system. Of course, all systems of law must be based on a substantial degree of agreement--law cannot be enforced if the members of the system are not willing to accept it. This is all the more true of international law because of the decentralized nature of the system. A nation makes international agreements that are in that nation's interests and will abide by those agreements unless it is to that nation's advantage to violate them despite the costs of such violations. In other words, much of law is based on self-interest, keeping in mind that self-interest includes the necessity of accepting some restrictions on one's freedom of action.

The third point to consider is that international law is "defended in case of need by coercion applied by States individually or collectively." Once again, the cause is the lack of a central government. There is no international body with the power to force submission of disputes for settlement. The necessity of self-help on the part of nation-states creates the possibility of violence resulting from attempts to punish violations of international law. A state, however, must take this risk into consideration when it considers violating international law. Often the risk is strong enough to result in the exercise of self-restraint by the state.[2]

"Every state derives some benefits from international law," says Louis Henkin.[3] The Soviet Union is, of course, no exception. Some critics of the Soviet Union say that the Russians have misused their "benefits" and have tried to deny those benefits to others. The Soviet Union generally has frankly used and continues to use international law as an instrument of foreign policy. This will be shown throughout the paper. It is pointless to condemn the Soviet Union for this since, to a large extent, every nation does the same, although less openly. Some examples of United States policies will illustrate.

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[2]The preceding summary of the operation and nature of international law is essentially the thesis of Louis Henkin, How Nations Behave (New York: Praeger Publishers, 1968)

[3]Louis Henkin, How Nations Behave (New York: Praeger Publishers, 1968), p. 32

The connection between the development of international law and the needs of foreign policy is a close one, policy often exerting a formative influence on legal theories. Yet sometimes the two are not easily reconciled. Therefore, a dichotomy between theory and practice often appears. This dichotomy is an important feature that is found throughout the discussion.

We have commented on the nature of international law and the striking characteristics on Soviet practice of it. So that the consideration of recent Soviet trends of the past fifteen years or so may be seen in the proper perspective, the discussion will begin with a historical sketch of the development of Soviet international law.

CHAPTER II

THE DEVELOPMENT OF SOVIET INTERNATIONAL LAW

Soviet international law, both theory and practice, has changed tremendously from the establishment of the revolutionary new state of 1917 to the established world power of today. To understand Soviet policies today, however, it is helpful to understand their origins. As with all things Soviet, the theory of international law is expounded in terms of Marxism-Leninism. Without some background in Marxism-Leninism, the Westerner cannot accurately analyze Soviet claims. Theory of international law has continued to develop and change, as has the practice. Quite often the actual working (or not working) of international law in Soviet foreign policy reveals much more than the statements of Soviet legal authorities. A survey of these theories and practices reveals the close relationship between the development of Soviet international law and foreign policy.

Marx

Karl Marx, the original authority for Communist thought, is always consulted first, of course. Marx had nothing to say on international law itself, which simplifies the task of justifying new theories in Marxist terms. His theories on the nature of the state

and of law are often referred to, and the need to put policies in Marxist-Leninist terms exerts a shaping influence to form, if not content. His primary thesis was that social institutions, including law, rest on the economic structure of society.

> In the social production of their life, men enter into definite relations. . . which correspond to a definite state of development of their material productive forces. The sum total of these relations of production constitutes the economic structure of society, the real foundation, on which rises a legal and political superstructure. . .[1]

Had Marx commented on international law of his time, he would have said that it was based on the bourgeois class domination of the states in the international system. How to explain international law operating in a world where both capitalist and socialist economic systems exist has posed a sticky problem for the Soviets. Various attempts have been made, none of which have solved the problem.[2]

It is interesting to note that Marx did not advocate violation of bourgeois international law. Marx is quoted in the Soviet international law textbook as saying, "Violations of law can never be allowed to supplant the law itself."[3] The law based on bourgeois domination was to be overthrown by the proletarian revolution. Marx predicted that the revolution, beginning in advanced industrial countries, would spread through the working classes everywhere and

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[1]Karl Marx, Preface to The Critique of Political Economy from Selected Works (2 vols.; Moscow: Foreign Languages Publishing House, 1950), pp. 328-329.

[2]Kazimierz Grzybowski, Soviet Public International Law (Durham, N.C.: Rule of Law Press, 1970), pp. 4-17.

[3]International Law, p. 59.

become international. When socialism was achieved, there would be no state and no law, international or otherwise.

Lenin

Lenin--philosopher, revolutionary, and statesman--is an important figure, for it is he who first deals with international law as the leader of the new Soviet state. Before the Revolution of 1917, he faithfully followed Marxist doctrines, adding his conviction of the inevitability of violent revolution under the leadership of an elite of professional revolutionaries. His work Imperialism, the Highest Stage of Capitalism explained how the revolution could first occur in Russia. The system of capitalism was now world-wide, supported by the exploitation of backward areas. Starting at the weakest link of the capitalist system, the revolution would become international. Later Soviet theories of international law--self-determination, just wars, and wars of national liberation, especially--were to be backed by references to this work.[4]

In November of 1917, the Bolsheviks with Lenin at their head seized power. The victorious revolutionaries looked for the revolution to spread throughout Europe. It was not until several years later that they realized that world revolution was to be long delayed. Meanwhile, the Bolsheviks rejected "imperialist" international law, repudiating the agreements and treaties, as well as the debts, of tsarist regine. World-wide proletarian cooperation would soon replace

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[4]Ibid., pp. 61-62.

international law, they thought. Lenin's Decree on Peace called for immediate peace without annexations or indemnities and for self-determination of peoples, bringing to mind the idealistic goals of Woodrow Wilson.

Reality forced the revolutionary state to amend its views and its practices. The Soviet state, torn by civil war, found itself surrounded by hostile capitalist states, alienated by the threats of overthrow. Lenin, the master politician and statesman, saw that, if the revolution was not to be destroyed, the Soviet government must survive. While in theory, Lenin continued to stress that legality was determined by the socialist element, in practice Lenin's policies toward international law were dictated by what he saw as the most beneficial solution for the state.[5] The Decree on Peace failed with the Treaty of Brest-Litovsk (making peace) with the Germans. Turning to bourgeois international law, Lenin used it to condemn and to help prevent foreign intervention as had taken place during the Civil War. He skillfully employed international law in making the Rapallo Treaty with Germany and trade agreements with Great Britain to break through the isolation of the Soviet Union during the NEP period in the early twenties.[6]

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[5]Ivo Lapenna, "Lenin, Law, and Legality" in Lenin: The Man, the Theorist, the Leader, edited by Leonard Shapiro and Peter Reddaway, (New York: Frederick A. Praeger, 1968), p. 262.

[6]Kurt London, "Soviet Foreign Policy: Fifty Years of Dualism," in The Soviet Union: A Half-Century of Communism, edited by Kurt London, (Baltimore: Johns Hospkins Press, 1968), pp. 336-338.

Lenin stressed the virtue of flexibility. In addition to making new international agreements, he even renewed some of the tsarist treaties that he had formerly repudiated, where they did not contradict socialist principles. This flexibility also extended to the keeping of agreements. "Promises are like pie crusts, made to be broken," he said, quoting an English proverb.[7] If the situation so indicated, Lenin did not hesitate to violate an agreement. Needless to say, this practice fostered a strong distrust of Soviet reliability. Yet the need for peaceful relations with other states encouraged Lenin to somewhat moderate his actions. The conflict begun in this period between the world communist movement and the interests of the Soviet state in Russia created a dualism in Soviet foreign policy that influenced Soviet international law.[7]

Stalin

The outcome of the power struggle following Lenin's death in 1924 was the concentration of power in the hands of Stalin. The theory of permanent revolution, held by the defeated Trotsky emphasized the spread of the communist movement and, undoubtedly, would have taken a more revolutionary view of international law. Stalin's concern, even more so than Lenin's, was the survival and strengthening of the Soviet Union. "Socialism in one country" became the slogan. Stalin

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[7]V. I. Lenin, quoted in Nathan Leites, A Study of Bolshevism (New York: Free Press of Glencoe, Inc., 1953) pp. 532-33.

[8]London, p. 327.

began a program of normalization of relations with capitalist countries, especially in trade. This implied recognition and acceptance of international law, although the Soviet state continued to express the need for a socialist system of international law.[9]

With plans for world revolution shelved, new theories of international relations developed. A dualistic tactic-theory of cooperation and competition explained the communist position. Competition between the capitalist and socialist systems would continue in the economic sphere. In international law and governmental relations, the Soviet Union would cooperate with the capitalists. Stalin, treating international law as a convenient tool of foreign policy, found this useful. His approach to international law was eclectic, accepting some concepts and rejecting others. The U.S.S.R. struggled for recognition of a socialist international law that would give them more influence on the interpretation of international law.[10] The Comintern, formed in 1919 to organize the world revolution, was not under the complete control of the Soviet government and was used to back up Soviet demands.

Shifts in Stalin's policies in international law took place in the thirties due mainly to concern for Soviet security. The Soviet Union had been hostile to the formation of the League of Nations, seeing it with some justification as an imperialist organization to protect

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[9] Ibid., p. 332

[10] Grzybowsky, Soviet Public International Law, pp. 10-16.

capitalist claims in the world system. The rise of Naziism influenced Stalin to look more favorably at the peacekeeping potentials of the League. In 1934, the U.S.S.R. became a member of that organization. During the five years of its membership, the Soviet Union was the staunchest supporter of the legal regulations of the League. The Soviet experiment in international organization ended in disillusionment, when the League failed to keep peace and restrain Fascism. To buy time, Stalin signed a nonaggression pact with Germany. When war broke out in Europe, the Soviets condemned it as another war of imperialism.[11]

World War II and After

The German invasion of Russia on June 22, 1941, transformed the imperialist war overnight into a patriotic struggle in defense of socialism and the Soviet Union. Alliances with capitalist nations (the Allies) were formed, and to please them, the Comintern was simply dissolved. The triumph of the "patriotic struggle" reshaped the Soviet world position and its views on international law. In the wake of retreating German armies, the Soviets set up a series of socialist states that remained under the control of the Kremlin. Socialism in one country was no more, and for the first time international socialist law was possible. The successful Communist revolution in China in 1949 added another socialist state. Socialist principles of

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[11]London, pp. 342-344.

international law emphasizing sovereignty and self-determination were set up, although in reality the satellite states were almost completely dominated by ~~by~~ Moscow. This dichotomy led to the disintegration of cooperation within the Eastern bloc.[12]

The Soviet Union made important contributions to the shaping of international law after World War II through participation in the forming of the United Nations. The quick deterioration of the war-time alliance soon grew into the Cold War. Stalin re-activated the two-camp theory of struggle between capitalism and socialism. This conflict between the Soviet Union and the United States was perhaps the most important feature of the post-war international system. The international legal theory of the Soviet Union reflected their perception of the Western nations as hostile to Communist survival.[13]

Khrushchev

A new phase in Soviet foreign affairs began with Khrushchev's rise to power in 1954, following the death of Stalin. The new leader made some major adjustments in theory and practice. "Peaceful Coexistence," a theory that both capitalist and socialist states could exist in the international system, their competition taking place through mostly peaceful means, was developed. A drive to have Peaceful Coexistence accepted and codified as a principle of international law

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[12]Kazimierz Grzybowski, The Socialist Commonwealth of Nations (New Haven: Yale University Press, 1964), pp. 248-249.

[13]Jan F. Triska and David D. Finley, Soviet Foreign Policy (London: Macmillan Company, 1968), pp. 21-22.

was vigorously, though not successfully pursued. Khrushchev endorsed a three-camp concept of the world, (replacing Stalin's two-camp theory), which recognized the existence of the new and nonaligned nations. During the Khrushchev years, the Soviet Union became more comfortable in its position as a superpower with interests to protect. The Soviet Union's claims to being a revolutionary state became faint indeed. It became more willing to recognize the value of stability fostered by international law.[14]

Khrushchev announced the development of a socialist system of international law. The guiding principle was socialist internationalism. Following the revolts in Poland and Hungary in 1956, efforts to reform the socialist system resulted in encouragement of cooperation among national Communist parties. Institutions creating legal ties between the socialist governments were formed. Despite these developments, relations with the socialist countries continued to present the Soviet government with a most serious problem. The rift with Yugoslavia and the Sino-Soviet split contributed to Khrushchev's downfall in 1964.[15]

Post-Khrushchev

There is little need for prolonged discussion here since the subsequent chapters are a more thorough examination of trends of the

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[14]Ibid., pp. 12-13.

[15]Grzybowski, The Socialist Commonwealth, pp. 251-55.

Khrushchev regime and the following years. In general, the Brezhnev-Kosygin leadership has been rational and bureaucratic, more so than the Khrushchev regime. Regarding international relations, the Soviet Union has strong interests in conserving the status quo. As we shall see, the Soviet Union, for the most part accepts international law, although it may disagree with other nations on interpretations. The most important source of international law, according to the Soviets, is the treaty, discussed in the next chapter.

CHAPTER III

THE TREATY IN SOVIET INTERNATIONAL LAW

In the Soviet Union, the treaty is regarded as being of primary importance for international law. Where new law between nations is called for, the favorite Soviet instrument is the treaty. It has been noted that Soviet theories and practice do not coincide at times. This is so in the Soviet positions regarding treaties. To maintain a balanced view, one must recognize the relationship between the two.

Throughout its history, the Soviet Union has repeatedly stressed that international relations must be based on negotiations between sovereign and equal states. Such a relationship may be correctly expressed in a treaty. The sovereign state is not obligated to accept and obey laws in the making of which the state did not participate and to which it did not agree. A positivistic interpretation of law is given, stressing law as something made by the parties involved. The Soviets traditionally have rejected the idea of natural law as something inherent in the nature of the universe. That view is unscientific according to Marxist principles that explain that law is a product of society's economic basis. Customary law is frowned upon.

The supremacy of the treaty as a source of international law is characteristic of most states. The Soviets, however, place considerably more value in positivist law than many others whose culture teaches the concept of natural law. Comparing the Soviet Union and the United States on this point, Harold J. Berman states:

> In Soviet theory, states are bound by that to which they have consented by treaty, with custom playing a very subsidiary role. The United States, on the other hand, has placed greater emphasis on customary international law and at the same time has emphasized the existence of universally accepted principles of fairness and justice independent of treaties.[1]

Jus Cogens

The Soviet view of the basic position of formal agreements is shown by the attitude toward the principle of jus cogens. The debate on jus cogens in recent years during the consideration of the Law of Treaties by the International Law Commission questioned the arbitrary "sovereignty" of the treaty in international law. Jus cogens is defined as those rules "fundamental to the present international system" which "limit the freedom of the states in determining their mutual rights and obligations." In other words, jus cogens are rights states cannot derogate by agreement in treaties.[2] One Soviet jurist writing on the question reveals the Soviet concern for the essential characteristic of agreement among states.

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[1]Harold J. Berman, "Law as an Instrument of Peace in U.S.-Soviet Relations," Stanford Law Review, XXII (1971), p. 950.

[2]Grzybowski, Soviet Public International Law, pp. 61-62.

> International law is a specific branch of law. Its norms are established on the basis of agreements between states which are both the "legislators" and "executives" and "defenders of norms established." . . . But this specificity does not in the slightest degree deny to international law, including such a vital component as norms of jus cogens, a quality of legal superstructure.[3]

Thus norms of international law, jus cogens included, are the products of agreements between states, even when not formal agreements. Alexidze goes on to say:

> However, the norms of jus cogens can be changed only given the approval of all or almost all states, for they are a basis of international law and order established by the states.

Some of these norms named by the Soviets are the sovereign rights of states and peoples, defense of peace and security, pacta sunt servanda ("the treaty must be observed"), rights of human beings to dignity and freedom, and prohibition of crimes against humanity.[4] Thus it may be argued that the Soviet jurists have accepted some limitations on the treaty, especially on the content of treaties.

Characteristics of the Treaty

The Soviet Union has well-developed theories regarding the nature and characteristics of the treaty. It is defined as an international agreement among states creating rights and obligations in international law. Usually, but not always, the treaty is in written form. Only sovereign states have the authority to conclude treaties,

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[3]L. A. Alexidze, "Problem of Jus Cogens in Contemporary International Law," Soviet Yearbook of International Law, 1969 (Moscow: Publishing House Nauka, 1970), p. 147.

[4]Ibid., p. 147.

although sometimes national groups fighting for their independence are so classified by the Soviet Union. The subject matter of the treaty must be capable of realization, administrable under international law, and not outside the authority of those states (i.e., limited by the principle of jus cogens).[5]

According to the Soviet Constitution, the various Union Republics of the Soviet Union have the right to make international agreements, although no such specific provisions were set down. In practice, the individual Republics have never exercised this right, and treaties are negotiated by the leaders of the U.S.S.R. and its Presidium. The requirement of ratification is an indication of the modifying effects of world opinion and events on Soviet policies. According to Leninist ideology, the Soviet Union carries out the will of the people as expressed through the Party. Under the principle of democratic centralism, there is no internal disagreement, and there is but one will to be carried out. In order to enhance Soviet prestige and to reciprocate the ratification by parliamentary organizations in other states, the Soviet Union found it worthwhile to formalize treaties by the constitutive act of ratification.[6]

Some aspects of Soviet treaty policy indicate the frank subservience of international law to the interests of foreign policy.

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[5]Triska and Finley, pp. 401-402.

[6]Ibid., pp. 403-405.

An example is the Soviet views on reservations to treaties. Reservations are formal declarations by signatory states declaring the intention to exclude some provision of the treaty or to change its meaning. The use of reservations has arisen with the increase in the number of multilateral agreements concluded. The Soviet Union registered reservations to the Genocide Convention in 1948, successfully defending in the United Nations its right to do so in 1950. The most significant Soviet reservation is the refusal to agree to compulsory jurisdiction of the International Court of Justice. Despite the obvious convenience of such an instrument as reservation, the Soviet position is based on political reality rather than ideology. The heterogeneity of governments, culture, and ideology makes the practice of reservations almost a necessity in this age of multilateral contracts.[7] The United States, it should be noted, also made a reservation against compulsory jurisdiction of the ICJ.

A study of Soviet theories concerning the interpretation of treaties presents further evidence on how the Soviets work to protect their interests. The bulk of the power of interpretation is possessed by the contracting states. This may or may not be provided for in the treaty itself. In some cases, other bodies of interpretations may be the ICJ, an international organization (such as the UN Security Council), arbitration or conciliation commissions, or diplomatic missions. The contracting parties, however, maintain the right

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[7] Ibid., pp. 406-408.

to decide whether to submit a case and to whom it will be submitted for judgment, unless such provisions were agreed upon in the treaty. Although such theories are designed to protect Soviet interests, it is mistaken to view them as biased attitudes common only to Communists. Most nations act on the same policies for their protection.[8]

A few other comments regarding Soviet doctrine on treaties are appropriate. The methods of lawful termination of agreements accepted by the Soviet Union are those recognized by the international system in general. Violation by one party is just grounds for the termination of the treaty by other parties. The Soviet Union also advocates progressive revision of treaties to correspond to changing international conditions and claims the right to judge the legality of treaties by Soviet standards. The question of rebus sic stantibus (justification for violating a treaty because of a changed situation) has been a sticky issue. Soviet jurists have alternated between insistence that treaties be kept and endorsement of necessary exception to the rules. Western legal scholars have shared this vacillation.[9]

Lenin, in the Decree on Peace in 1917, renounced secret diplomacy and subsequently made public the texts of over one hundred secret treaties made by the tsarist regime. Although the Soviets have not changed their ideological stance, the practice of the Soviet government has been otherwise. The existence of secret agreements made before and

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[8]Ibid., pp. 410-411.

[9]Ibid., pp. 411-414.

during World War II is proven, and the evidence strongly suggests several have been made since 1945. Defense of this practice by Soviet authorities consists of a hazy differentiation between evil secret diplomacy and necessary state secrets. Only the latter, of course, is permissible and done by the Soviet leaders.[10]

Soviet Treaties in Practice

Many American observers of the U.S.S.R. have been skeptical of Soviet promises. They see the situation unchanged since Lenin's famous "pie crust" statement. Lawrence W. Beilenson expresses such a view in his book, The Treaty Trap. Despite his stated intent to study the question without bias to Communism, Beilenson finds sinister motivations behind every Soviet action. His study is restricted to treaties of predominantly political content, which is partly responsible for his negative, one-sided viewpoint.[11] A much more satisfactory treatment is Triska and Finley's quantitative analysis of Soviet treaties.[12]

The most striking fact shown in the analysis is the Soviet preference for the bilateral treaty. In the period 1958-62, 965 of a total of 1058 international agreements were bilateral, a ratio of over

[10]Ibid., pp. 415-418.

[11]Lawrence W. Beilenson, The Treaty Trap (Washington, D.C.: Public Affairs Press, 1969), pp. 161-191.

[12]Triska and Finley, pp. 422-427.

ten bilateral to one multilateral agreement. Treaties were negotiated with 62 states, although close to 90 percent of the treaties were concluded with 36 of these states. Of these, 43.7 per cent were made with other Communist nations, 27.6 per cent with developing countries, and only 7.1 per cent with Western nations.[13] Beilenson was not concerned with treaties other than those concluded with the West. Although they are undoubtedly important to the United States, they still present only a small portion of Soviet treaties.

Content analysis of the treaties reveals the fallacy of emphasizing only political treaties. The most common type of treaty was that dealing with trade and commerce. The number of agreements of predominantly political conflict have sharply declined in comparison with the number negotiated before 1958. A large number of treaties deal with mostly technical questions with which there is a minimum of political disagreement.

In non-political, economic and technical treaties incidents of Soviet violation are infrequent and then are due to political causes. Primarily Soviet violations are against political treaties (alliances, treaties of mutual assistance, non-aggression, neutrality, etc.). Although, as we can see, the treaty as a method of international cooperation is not limited to political questions, political treaties are most likely to be violated. Political treaties generally

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[13] Ibid.

concern matters which states consider very important to their national interests. Of course, violations of such agreements receive a great deal more attention than the keeping of a hundred non-political treaties. The record of the Soviet Union, even for political treaties, does not show significantly higher numbers of violation than the records of other world powers.[14] Furthermore, even Beilenson noted that the United States, as well as the Soviet Union often violated political treaty commitments.

Trends Present and Future

An excerpt from Soviet Foreign Policy by Triska and Finley sums up the role of treaties in Soviet policies.

> Through international treaties, Soviet Russia defined, maintained, and developed its independence and secured status as well as recognition of its "special" . . . structure in the world. . . . They [treaties] helped to make Soviet Russia, originally an outcast, gradually acceptable and accepted in the world; in the process, they permitted the U.S.S.R. to introduce, press for, and at times successfully defend radical innovations in international relations. At the same time, however, international treaties assisted other nations in curbing many excesses on the part of the U.S.S.R., either directly by their contents or through the understanding that there would be no treaty unless certain conditions of comity and reciprocity were met by the Soviet Union.[15]

What are the trends in the role of the treaty now and what trends can be projected for the future? Treaties will certainly continue to be one of the most widely-used forms of international law, although informal agreements may become more popular. As a method of solving major political disputes, too much should not be expected of

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[14] Ibid., p. 421-423.

[15] Ibid., p. 393.

treaties. Treaties are quite valuable in reducing tensions and in eliminating possible areas of conflict in the future. Examples of treaties with preventative intent are the sea-bed treaty, the treaty for peaceful uses of outer space, and the limited test-ban treaty. On the other hand, there has been little success in the half-hearted attempts at arms limitation and disarmament. The Strategic Arms Limitation Talks, begun in late 1969 have produced no treaties and neither side is very anxious to come to an agreement.[16] It would be surprising if the two nations decided on major arms reductions.

The number of treaties of a functional, technical nature will probably continue to grow. Although not spectacular, they perform very real services by keeping the machinery of communication and co-operation running smoothly. As the parts of the world system grow more interdependent, the regulation of an increasing volume of international contacts will be needed between the Soviet Union and other nations.

In general, Soviet treaty theory and practice are quite similar to that of other nations. The Soviet Union finds it beneficial to participate in and to obey treaties. Like all nations, the Soviet Union in so doing tries to maintain and to increase its influence. There are no indications of any radical shifts in the near future.

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[16]Thomas W. Wolfe, "Soviet Approaches to SALT" Problems of Communism, XIX (Sept.-Oct. 1970), pp. 1-10.

CHAPTER IV

INTERNATIONAL ORGANIZATIONS AND SOVIET LAW

The twentieth century has witnessed the development of many international organizations. These organizations, established by treaties, have grown in power to the extent that in some instances they are considered subjects of international law, enjoying rights of a sovereign body. The Soviet Union, of course, has been affected by the rise of international organizations and has tried to exert its own influence on the course of their development. The topic of Soviet relations with international organizations covers a vast number of transactions. This discussion is mainly concerned with Soviet policies regarding the legal powers and limitations of international organizations.

The Soviet Perspective

Early in its history, the Soviet Union rejected the League of Nations, dismissing it as an imperialist "club" to maintain the status quo. The Soviet attitude was based on the memory of intervention during the Civil War by France and Great Britain--the most influential members of the League. This early view of international organizations has continued to color Soviet opinion, partially explaining their negative stance toward cooperative efforts. Gradually, having found it useful to participate in international organizations,

the Soviet Union policy has shifted. One major factor in the shift was a desire to influence the formation of post-World War II international law.

Ideological, as well as historical, reasons have limited the Soviet perspective. As we discussed in the previous chapter, time after time the Soviet Union has stressed the importance of state sovereignty. This is especially the case in dealing with international organizations. The Soviets are most reluctant to concede any sort of autonomy to bodies other than states. The main target of this policy is the United Nations Organization (the UN). Furthermore, the Soviet Union, priding itself on its monolithic nature, distrusts the claims of cooperation from a loose organization of such diverse member nations.[1] Despite some modification, the Soviets continue to view world relations in terms of a struggle between the capitalist and socialist systems. The UN cannot unite the two systems. The Soviet leaders continue to reject the idea of lasting neutrality.[2]

In some respects, the Soviet attitude toward the UN is a product of political realism. Going beyond mere negativism, the Soviet approach recognized the fact of the pluralistic nature of the world community. Accordingly, Soviet goals in the UN have been quite

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[1]Richard N. Gardner, "The Soviet Union and the United Nations," Law and Contemporary Problems, XXIX (Autumn 1964), pp. 845-846.

[2]Alexander Dallin, "The Soviet View of the United Nations," from Legal and Political Problems of World Order, edited by Saul H. Mendlovitz. (New York: Fund for Education Concerning World Peace Through World Law, 1962), pp.500-502.

limited compared to the sometimes overly optimistic hopes of the United States. In fact, this attitude was quite realistic in the early years at the UN when the United States enjoyed a "mechanical majority" and the Soviet Union had only the support of its Eastern European satellites. The Soviet Union, as usual, was frank in its use of the organization to accomplish Soviet goals. The admission of the new developing states to the UN changed the early alignments and with it, the character of the UN. Although the increased diversity of opinions has made united action more difficult, the movement also resulted in a slight loosening of Soviet attitudes.

A Shift in Attitude

The Soviet Union, becoming more sophisticated in international diplomacy, now sees more advantages in participation at the UN than it did before. Soviet diplomats have found the UN useful in attempts to appeal to the new developing nations. The UN also provides a rostrum from which it can reach a world-wide audience. However, the U.S.S.R. does not see the UN as an active force in initiating world law. That is the prerogative of nation-states.

The UN Charter and Resolutions

The Soviet Union insists on a strict, narrow interpretation of the powers of the United Nations. The UN Charter, say the Soviets, is a treaty, an international law which the members are bound to obey. Nevertheless, this treaty must be limited to its original purposes.

The Soviets strongly deny that the Charter is the constitution of a new system of world government. The U.S.S.R has resisted efforts to enlarge the functions and authority of the UN, such as those of Dag Hammarskjold during his tenure as Secretary-General.[3]

Those who hope for a strong world government in the future sometimes see the UN General Assembly as the prototype of the legislative body of that supergovernment. Soviet jurists submit that the role of world legislature does not belong to the General Assembly. Soviet international jurists, however, do not agree among themselves on the legal force of General Assembly resolutions. Some scholars state that resolutions in conformity with the Charter <u>are</u> a source of international law binding member nations. Others maintain that resolutions <u>are not</u> a source of law and that they are binding only in organizational or technical questions. In between the two extremes are a variety of more moderate viewpoints, some of which set up conditions where resolutions are binding. For example, one school of thought advocates recognition of resolutions as a source of law when adopted by a two-thirds vote. Others gave their approval to resolutions adopted unanimously. A more complicated approach calls for acceptance by a majority of states from both socio-economic systems, (socialist and capitalist), and by members of all three major blocs. At any

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[3]Edward McWhinney, "The Rule of Law and the Peaceful Settlement of Disputes," in <u>Soviet and American Policies in the United Nations</u>, edited by Alvin Z. Rubinstein and George Ginsburgs (New York: New York University Press, 1971), pp. 169-170.

rate, many Soviet scholars accept UN resolutions as a stage in the process of law-making.[4]

Despite the views of their jurists, Soviet practice in the UN has been to continue to deny the General Assembly any substantial law-making authority. This position was expedient in the days when the Soviet Union almost always found itself in the minority. It it interesting that the Soviet position has not changed, despite the disappearance of an automatic pro-Western majority upon the entrance of the new nations, often dubbed the "Third World." Conceivably, the Soviet Union might have attempted to consolidate an anti-colonial coalition of socialist and Third World nations, but it has resisted any temptations to do so. Besides being reluctant to damage their credibility in an about-face, the Soviet Union shows caution in its UN diplomacy.[5]

The Security Council and Peacekeeping

In the Soviet view, the Security Council is politically and legally the primary organ of the United Nations. According to the Charter, the Security Council was vested with the peace-keeping authority. The veto right of the five original permanent members was partly a concession to the Soviet preference for unanimity. Furthermore, the Soviet government believed this an essential condition for

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[4]M. V. Yanovsky, "Soviet Science on the Legal Force of U.N. General Assembly Resolutions," Soviet Yearbook of International Law, 1964-65, (Moscow: Publishing House Nauka, 1966), pp. 121-122.

[5]McWhinney, "The Rule of Law. . .," p. 170.

the safe-guarding of socialist interests. The Western states generally agreed, feeling a similar need for preserving their interests. The veto was a realistic measure for all, since the UN was not capable of enforcing action against a superpower. The frequent Soviet exercise of the veto (103 times by 1965) prevented the "proper" functioning of the Security Council, according to the pro-West majority. The result was the General Assembly Uniting for Peace Resolution in 1950 and the transfer of much of peace-keeping activity to the General Assembly. The Soviets saw this as a violation of the UN Charter.[6]

Peace-keeping activities themselves, especially those taken by General Assembly action, have raised controversies over questions of legal interpretation. As a rule, the Soviet Union has opposed such questions only when they are perceived as against the direct interests of the U.S.S.R. The U.S.S.R. continues to insist on the voluntary nature of peace-keeping, especially the financial costs. In the early sixties, a crisis developed over assessments for peacekeeping costs and Article 19 of the Charter, reaching a head in 1965. The U.S.S.R. with its position of opposition to collective responsibility won out when the U.S. backed down to avoid disastrous confrontations.[7]

International Court of Justice

We have already referred to the Soviet policy regarding the International Court of Justice in the discussion of treaty law.

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[6]John G. Stoessinger, The United Nations and Superpowers, (New York: Random House, 1965), pp. 3-19.

[7]Ibid., pp. 90-113.

With few qualifications, the Soviets are extremely hostile toward judicial settlement of international legal questions. The U.S.S.R. has steadfastly resisted attempts to make submission of disputes to the International Court of Justice (ICJ) compulsory. In the struggle between socialism and capitalism there can be no impartial bodies. It is also important that, as in the General Assembly, the Soviets faced a largely pro-Western court in the ICJ.[8] But the Soviet Union is not the only state refusing to accept compulsory jurisdiction. Despite its idealistic analogies of the ICJ to the U.S. Supreme Court, the U.S. in the Connelly Amendment repudiated the compulsory "power" of the ICJ. The United States is not willing to submit major political questions to the World Court, but only issues of secondary importance. The actions of both the Soviet Union and the United States are, after all, an indication of the very real fact that there are many political disputes not amenable to solution by legal formulas.[9]

Other Organizations

Some mention should be made of Soviet legal attitudes toward the economic and social functions of international organizations. Many of the bodies dealing with such functions are associated with the United Nations. The Soviets have held a restrictive view of the legality of these organizations. International economic and social cooperation

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[8]Zigurds Zile, "A Soviet Contribution and International Adjudication." American Journal of International Law, LVIII (April 1964) pp. 364-366.

[9]McWhinney, "The Rule of Law. . .," pp. 171-178.

no doubt have seemed incongruous to the Soviets in light of their concept of a world-wide struggle between two major socio-economic systems.

Politically, Soviet leaders wished to maintain maximum freedom of action. The Soviet Union did not join the World Bank, the International Monetary Fund, and the General Agreements on Trade and Tariffs. For many years, it was not a member of the subsidiaries of the UN (UNESCO, ILO, and WHO). The Soviet contributions to EPTA and to the Special Fund of the UN in 1964 were only 4 per cent of total contributions, although Soviet contributions composed 17 per cent of the regular budget. Yet gradually, the Soviet Union has come to participate more in international organization activities. The Soviet desire to favorably influence the newer nations makes necessary greater involvement and more sophisticated, less heavy-handed techniques. Therefore, Soviet theories are moving toward a more conciliatory view of social and economic functions in response to this need.[10]

The Soviet Union remains hostile to the development of any powerful international organization that would restrict or infringe upon the sovereignty of the Soviet state. Naturally, any organization whose goals and functions are not in accord with Soviet interests are not favorably regarded by the Soviet leaders. To an increasing extent, however, the Soviets have found international organizations and

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[10]Gardner, pp. 850-853.

cooperation, although limited, to be a fact of life in international relations. More and more, it is to the Soviet advantage to work through international organizations, especially because of the wish to gain the cooperation of the "Third World." The Soviets have recently called for "streamlining the regulation of relations between states and international organizations. Although the international organization does not possess the legal personality of a state, it is now recognized as a "derivative and special subject of international law." The Soviet Union, due to its increasing interests in international organization is likely to develop legal theories in accordance with its interests, helping to create the streamlining that it desires.

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[11]I. I. Lukashuk, "Some Problems of Codification and Progressive Development of International Treaties Law, Soviet Yearbook of International Law, 1966-67 (Moscow: Publishing House Nauka, 1968) p. 70.

CHAPTER V

THE SOVIET UNION AND CUSTOMARY LAW

The attitude of Soviet international jurists on customary law has traditionally been even more negative than their attitude toward international organizations. Customary law itself is somewhat amorphous, being defined as principles that are generally accepted although not written down as formal law. The concept may be extended to norms or patterns of behaviour in relations between states. The reasons for Soviet opposition were both ideological and political. Like the attitude toward international organizations, views on customary law have shifted in recent years. We will now examine some reasons for the Soviet attitudes and how they have changed.

Resistance and Customary Law

There is a strong ideological basis for opposition to customary law in Communism. We briefly alluded to this in the discussion of treaties.[1] Customary law can easily, though not necessarily, be tied to the idea of natural law, which the Soviets reject as unscientific. The emphasis on positive law conflicts with customs that do not reflect specific or bound agreements concluded between sovereign states. Moreover customary law was not adaptable to the Marxist thesis of law as a product of the material basis of society.

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[1]See Chap. iii, p. 16.

In some respects, customary law may be said to be a product of society. In the first years of the Soviet regime, the customary laws of the international system were mainly the results of the interests of capitalist European states during the past centuries. The Soviet leaders, isolated and defensive, saw little help from custom which they feared might be used against them. Thus, the Soviet rejection of customary law formed. It is with the rise of the Soviet Union as a world power that we see a change of attitude.

Development of New Customs

As has been noted before, the theory and practice of Soviet international law often differ significantly. Flexibility and pragmatism are evident in Soviet policy. Therefore, it should not be surprising that as the Soviet Union developed as a world power, norms of behaviour established themselves. The increasing influence of the U.S.S.R. and increasing number of international contacts, especially with the United States, gradually led to new "ground rules." These were unwritten "laws" that guide the actions of the superpowers in the post-World War II world. The rules, of course, must be flexible, conforming to the changing balances of power.[2]

During the early years of the Cold War, the ground rules, or customary laws, were either lacking or deficient. The numerous

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[2]Edward McWhinney, "Soviet and Western International Law and the Cold War in the Era of Bipolarity," International Law, Vol. II of The Strategy of World Order, ed. by Richard A. Falk (3 vols.; New York: World Law Fund, 1966), p. 190.

confrontations of crisis proportions, constantly testing the commitments of the "Big Two," more than once threatened to escalate into war. Often the issues, not vitally important in themselves, became symbols of struggle for prestige to be won or lost. The instability and maneuvering for position were signs of the lack of customary law established for the new and rapidly shifting international situation that followed World War II. Some significance may be attached to the fact that also during the fifties, the Soviet Union sponsored their drive to establish their principle of peaceful coexistence as a principle of international law. The Soviets, feeling the increase in their power, tried to have the UN codify peaceful coexistence as a formal law into which they could inject their own interpretations. The vagueness and irrelevance of the doctrine of peaceful coexistence on an informal "working" basis disqualifies it as customary law. The Soviet regime under Khrushchev tried to use it, in effect, as customary law at times, implying the acceptance of that principle as an international norm. These attempts were usually followed by charges that the United States had violated that principle. In these cases, the Soviets asserted their ideological and political position to influence the formation of international law.[3]

In the sixties, relations between the United States and the Soviet Union became such that many students of international affairs saw the beginning of detente. The turning point was the Cuban missile

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[3]Ibid., p. 191

crisis in 1962, which concluded with Khrushchev's backing down. Shortly afterwards came the signing of the partial test-ban treaty and the establishment of the "hot-line" between Washington and Moscow. Soviet pressure for the codification of East-West legal relations in the form of peaceful coexistence declined. The Soviet government began to see more advantages in the upholding of international law. The status quo orientation at this period is attributed by McWhinney to the Soviet "investment in reasonable stability of settled expectations."[4]

The trend in the U.S.S.R. was concurrent with a modification of attitudes by the United States. The U.S. foreign policy-makers came to the realization that the articulation of traditional customary law favored by Americans often failed to win the desired objectives. For instance, the U.S. began to accept the fact that the UN was often not a suitable arena for negotiation and settlement of serious conflicts. The United States and the Soviet Union strove to establish more viable methods of peace-keeping.[5]

The "Rules of the Game"

The result of these movements was the informal establishment of unwritten "rules of the game," guiding relations between the U.S. and the U.S.S.R. in the mid and late sixties. The emphasis was placed

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[4]Edward McWhinney, "Changing International Law Method and Objectives in the Era of Soviet-Western Detente," American Journal of International Law, LIX (1965), p. 6.

[5]Edward McWhinney, "The Rule of Law and the Peaceful Settlement of Disputes, in Soviet and American Policies in the United Nations, ed. by Alvin Z. Rubinstein and George Ginsburgs, (New York: New York University Press, 1971), pp. 165-83.

on less formal and less publicized methods. The underlying theme of these norms, or patterns of behaviour, was reciprocal deference. The two superpowers mutually recognized the existence of spheres of influence and of areas of sensitivity. Avoiding sudden moves and surprise was practiced to prevent escalation of disputes due to mistaken interpretations of intentions. In confrontations, the superpowers were to exercise economy in the use of power. That is, only coercion that is absolutely necessary should be used. The measures taken should be appropriate to the issues at stake.

Another promising feature of this period was the practice labelled as the "politics of mutual example," referring to a unilateral initiative to decrease tensions, in hope that the other side will reciprocate. Examples of ways this can be effected are troop reductions and cut-backs in defense budgets. This entire approach is based on consensual rules regarding low-level issues. Such rules were not intended to solve the basic ideological conflict, but to lessen tension so as to reduce the possibility of war.[6]

Norms in the Changing World Structure

The norms just discussed describe the behaviour of the major powers in an essentially bipolar world. Even in the sixties, however, this structural feature was changing. The Sino-Soviet split and Yugoslavia's independent road to socialism were signs of the increasing

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[6]McWhinney, "Changing International Law Method and Objectives," p. 7-14.

polycentrism of international communism. In the following years, China became a recognized world power. As the world's most populous nation and a nuclear power, its influence on the U.S.-Soviet norms grew. The Chinese, claiming to foster the spirit of communist revolution, denounce the revisionism of Moscow and appeal to the revolutionary elements in Asian countries. The power of China, challenging the power of both the U.S. and the U.S.S.R., has added another dimension to international relations and has upset the balance of customary relations established in the sixties.[7]

Another factor changing the bipolar structure is the failure of either the U.S. or the U.S.S.R. to win dominant influence over a significant portion of the Third World. The ideological struggle for influence with these nations has wound down considerably. The leaders of the Third World have been less politically naieve than the developed nations formerly believed. Not only have they maintained their independence, often playing the Americans and the Soviets against each other, but they also have demanded that international law be revised to reflect their interests more clearly. Besides the result of these trends in current customary law, the revolutionary tendencies in the developing nations have the potential of sudden eruptions that could drastically affect the international situation.[8]

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[7]Hans Morgenthau, "Changes and Chances in American-Soviet Relations," Foreign Affairs, XLIX (April 1971), no. 3, pp. 433-34.

[8]Ibid., pp. 431-32, 440.

Adding to these trends the rise of Japan to a position of major economic importance, the radical changes in the world balance of power since the mid-sixties are apparent. Obviously, the norms formerly appropriate are so no longer. The situation of the seventies is much more complex, and many more variables must be considered. At the present time, it is difficult to distinguish what mutually acceptable norms have been formulated in the new system. The powers are still testing each other out, and the situation is by no means stable. In time, however, it is expected that new rules of interaction will be established.

CHAPTER VI

THE SOVIET UNION AND THE THIRD WORLD

At several times during the preceding discussion, the "Third World" has been mentioned. These new developing nations--mainly of Africa, Asia, and Latin America--have presented special problems to the Soviet Union. Allied with neither the "imperialist" camp or the socialists, the majority of these states do not easily fit into the communist conception of clear-cut struggle between capitalism and socialism. Soviet legal theories regarding them have continually been adjusted and re-adjusted to bring theory more nearly in line with Soviet interests. We have already seen some of the effects of Third World politics on other areas of international law. This chapter will examine Soviet international law towards the nations themselves in this group.

The Development of the Policies

For the most part, the developing nations were colonies of the major European powers when the Soviet Union came into existence. The earliest Soviet position regarding national and colonial questions was taken in Lenin's statement at the Second Comintern Congress in 1920. It was the duty of the Communist Party to assist and ally with

those countries undergoing bourgeois democratic revolutions. In the colonial areas, the revolution of the middle class was a progressive element and a necessary step toward socialism. Perhaps more important was the obligation to instill in the working class a class consciousness leading to a proletarian socialist revolution.[1]

In the period between the two World Wars, the Soviet Union's ideological stance was to encourage revolution in the colonies by supporting nationalist forces fighting for independence. It is interesting to note, however, that the support of such independence movements was a policy of Imperial Russia before the existence of Soviet Russia. This is not too surprising when one considers that this policy was intended to weaken Russia's opponents by the loss of their colonies.[2] It would be difficult to believe that this motivation did not occur to Soviet leaders. Of course, the Soviet position could be defended ideologically by its opposition to imperialism. Despite the Soviet advocation of self-determination (a popular idea also supported by Woodrow Wilson), the Soviet Union remained, in a sense, a colonial power herself. Denying self-determination to nationalities with her boundaries, Soviet Russia brutally suppressed some of these movements with military force, especially in Georgia and the Ukraine.

The Stalinist regime did not follow through, in practice, the support of revolutionary movements. Stalin's first concern was

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[1]Harish Kapur, "A Half-Century of Soviet Foreign Policy in Asia," in The Soviet Union: A Half-Century of Communism, ed. by Kurt London (Baltimore: Johns Hopkins Press, 1968), pp. 460-1.

[2]Ibid.

the defense of the U.S.S.R. and his position as leader. Rebellions that would not contribute to Soviet security were discouraged. The Comintern, supposedly the headquarters of world revolution, was Stalin's instrument to accomplish foreign policy goals. Revolutionary movements in neighboring Iran and Turkey were cooled off. Local Communist parties in other countries were restrained by the Comintern. This was the case with China, in which the Russians went so far as to support the nationalist group, the Kuomintang. Consequently, the Communists suffered a drastic defeat that gave them a serious set-back.[3]

By the time Khrushchev came to power in 1954, the decolonization movement, as well as the Cold War, were well underway. The new nations became targets of Western and Soviet attempts to expand their spheres of influence. At the Twentieth Party Congress in 1956, Khrushchev announced his three-camp theory. During the previous regime, Stalin had recognized only two camps--capitalist and socialist. Khrushchev, in a rather major ideological revision, added the non-aligned states as a third camp. The early Cold War failures of Soviet military power in the West had encouraged Khrushchev to turn to the most non-aligned, developing nations. The three-camp theory no doubt was intended to impress these nations by "favorable" policies.[4]

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[3]Richard J. Barnet, Intervention and Revolution (Cleveland, Ohio: World Publishing Company, 1968) pp. 62-64.

[4]Triska and Finley, pp. 249-251.

Wars of National Liberation

The Soviets also incorporated the concept of "wars of national liberation" into their theories of international law. The normal meaning of the phrase referred to the liberation of colonies and dependent countries from the "yoke of imperialism." Traditionally, nations had considered colonial wars as domestic struggles not in the domain of international law. The Soviets, however, insisted that they were international wars. In a rare expansion of international law, the Soviets asserted the juridical equality not only of colonial dependencies, but also of national movements that have not yet established any form of state government. The Soviet Union claimed for them the right of national sovereignty.[5]

According to the Soviet position, although to the colonial nations belonged at least some of the rights of a state under international law, these nations were not to be held to the law themselves. In a colonial war, no matter who actually began the hostilities, it was always the colonial power who was the aggressor, since he was imperialistic. The Soviet Union cited the UN Charter to justify its theories through the "equal rights of self-determination" clause. Interpreting it to suit their purposes, the Soviet jurists equated self-determination with immediate self-government. They insisted that independence be granted to the remaining colonies at maximum speed.

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[5]George Ginsburgs, " 'Wars of National Liberation' and the Modern Law of Nations--The Soviet Thesis," Law and Contemporary Problems, XXIX (Autumn 1964), no. 3, pp. 910-926.

Furthermore, they declared that wars to achieve these ends were just wars waged against imperialist aggressors. The nationalist groups were free to ignore the laws of warfare because of both their primitive stage of development and their moral rights.[6]

Post-Decolonization

George Ginsburgs, when discussing the preceding question in 1964, concluded with the suggestion that the Soviet Union was then "riding the crest" of the wave of anti-imperialism. Noting that it found a ready audience, Ginsburgs questioned what would be the effect of that wave's recession.[7] Since the article was written, Soviet attitudes have indeed shifted somewhat. The independence granted to almost all the former colonies has removed the opportunity for Soviet insistence that it be accomplished. To some extent, this has been replaced to work for the liberation of peoples from neo-colonial oppression of economic domination.

Soviet objectives regarding the Third World are now more limited. Under the cautious leadership of Brezhnev and Kosygin, the role of international law is played down in Soviet relations with developing countries.[8] This development reflects disillusionment with the course of Soviet interests in neutral countries since World War II, plus continuing primacy of Soviet national interests over interest in

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[6]Ibid., pp. 926-939.

[7]Ibid., p. 940.

[8]Robert Wesson, Soviet Foreign Policy in Perspective (Homewood, Illinois; Dorsey Press, 1969), pp. 341-42.

communist revolution. Barnet observes that in Algeria, Cyprus, and Egypt, the Soviet Union has not encouraged local communist revolutionaries. On the contrary, it has tried to gain as an ally the established regime. Consequently, the Soviet Union has lost a great deal of its appeal to radical elements in many nations, who are turning to Red China for support.[9]

The Soviet thesis on national liberation, however, is a standard feature in virtually every revolutionary platform in developing nations. The cause itself is no longer championed by the Soviet Union as it was in the late fifties and early sixties. Abandonning the idea, it is almost impossible to find references to it in recent treatises on international law. The Soviet Union for the most part is a member of the ranks of the developed countries on this issue.

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[9]Barnet, p. 68.

CHAPTER VII

SOCIALIST INTERNATIONAL LAW

Soviet legal authorities assert that there are significant differences between general international law, various aspects of which have now been discussed, and law governing relations between socialist states. The Communists have long contended that their legal theories are more highly developed and more progressive than general international law. The reason for this greater advancement is the ending of class struggle within the socialist system. Law based on the socialist economic system is a product of the just, equal relations among the proletariat and of the absence of an exploiting class. Until after World War II, of course, the U.S.S.R. was the only socialist state and was unable to demonstrate the superiority of socialist law. Shortly thereafter, under the tutelage of the Soviet Union, Albania, Bulgaria, Czchoslovakia, East Germany, Poland, Romania, and Yugoslavia established socialist systems in their countries. This created the opportunity for the development of socialist international law.

The Theory of Socialist Internationalism

Proletarian internationalism, the forerunner of current principles, called for cooperation with nationalist groups and working

class people of all countries, for in Marxism the workers in all lands have the same interests. When applied to states with socialist governments, this principle was transformed into socialist internationalism. A Soviet jurist defines socialist internationalism as follows:

> The highest principle in the relations among countries of the world socialist system is the principle of socialist internationalism, which binds each socialist state to cooperation with other socialist states in the struggle against imperialism, for the victory of socialism and communism. Socialist internationalism is proletarian internationalism extended on the field of relations among sovereign socialist states.[1]

What are the secondary principles composing socialist internationalism? John N. Hazard has stated that, for the most part, the "higher international law" borrows principles of general international law, "filling old forms with new Socialist context."[2] The most important of these principles are the equality of sovereign states, self-determination of sovereign peoples, non-interference in the internal affairs of other states, peaceful coexistence and cooperation, and observation of obligations. In addition to these, a statement from the current Soviet text on international law adds another rule. "The policy of fraternal friendship and disinterested aid is fully reflected in the relations between the socialist countries."[3]

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[1]E. T. Ussenko, "International Law in the Relations Among Socialist States," Soviet Yearbook of International Law, 1966-67 (Moscow: Publishing House Nauka, 1968), p. 47.

[2]John N. Hazard, "Renewed Emphasis Upon a Socialist International Law," American Journal of International Law, LXV (January 1971) pp. 142-148.

[3]International Law, Academy of Sciences of the U.S.S.R., Institute of State and Law (Moscow: Foreign Languages Publishing House, 1962) p. 20.

In reality, the practice of these principles is mainly determined by the power and national interests of the Soviet Union. To be sure, Soviet interests and the methods usually employed to achieve them have undergone changes since the initial establishment of Soviet hegemony in Eastern Europe. In the first years of the socialist bloc, Stalin saw the socialist states as satellites intended to serve and to protect the U.S.S.R. His policies amounted to Russian colonialism, almost totally ignoring the needs of individual nations. These countries, milked dry by the Soviets, were soon alienated by Stalin's policies. The rebellions in Hungary and Poland in 1956 were caused in large part by such discontent. Khrushchev recognized the danger and began reforms in the socialist system. Some semblance of political autonomy was restored to the satellites. As part of the reform, socialist cooperation was incorporated into an organizational framework.[4]

Socialist International Organizations

The institutionalization of socialist relations made socialist ties into formal law through bilateral and multilateral treaties. The multilateral organizations are of chief concern. There are two such major organizations. The Warsaw Pact of 1955 is the political and military body, established by the signing of the Treaty of Friendship, Cooperation and Mutual Assistance. The initiative for such an organization was taken because of the remilitarization of West Germany

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[4]Triska and Finley, pp. 12-14.

and its entrance into the anti-Soviet North Atlantic Treaty Organization. The Treaty calls for a unified military command. A joint Political Consultative Committee, with equal representation from each sovereign state, is the decision-making organ. In practice, the organization, from the beginning, has been almost completely under Soviet control. It operates as an instrument of Soviet foreign policy.[5]

In many respects, the Warsaw Pact organization is similar to NATO. Each is a system of collective defense. Each owes its existence to the perception that the other constitutes a threat to security. Although not to the same extent, NATO is also controlled by its most powerful member, the United States. On the other hand, NATO has not used force upon a member state, as has the Warsaw Pact.

In the economic sphere, socialist relations are organized in the Council of Mutual Economic Assistance (COMECON). Formed in 1949, this organization became a significant force only after the death of Stalin in 1953. The functions of the COMECON are to regulate industry, trade, and agriculture in order to maintain the highest possible development of socialism. Nominally, the COMECON operates on the assumption of the equality of all member states. As in the Warsaw Pact, however, the Soviet Union dominates. Not surprisingly, this has usually meant that the best interests of the socialist system are found to coincide with the best interests of the U.S.S.R.[6]

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[5]Andrzej Korbonski, "The Warsaw Pact," International Conciliation, no. 573 (May 1969), pp. 5-25.

[6]Kazimierz Grzybowski, The Socialist Commonwealth of Nations (New Haven: Yale University Press, 1964), pp. 263-270.

The COMECON has been compared to the European Economic Community, but the differences are certainly great. In Eastern Europe virtually all economic activity is government-owned and controlled. The Common Market sponsors cooperation and some economic integration of largely free enterprise economies. Furthermore, in the Common Market, no one state is powerful enough to dominate the others. The EEC is completely voluntary, but the legal organizing of international economic activity under COMECON is an attempt to remove the need for coercion by institutionalizing control instead.[7]

Several factors have contributed to the relatively easy formation of international legal ties among the socialist states. Naturally, it is less difficult to reach agreement when some of the factors are homogeneous. The socialist system has much of the needed homogeneity. The ideological structure of Marxism-Leninism is common to all socialist states. Therefore, it is relatively simple to express their goals in the same language. The legal structures are also parallel. The reform movement of the early 1960's resulted in the adoption of new constitutions and civil codes modeled after the Soviet Union's system. Furthermore, the extreme centralization of government facilitates the coordination and control of international socialist affairs.[8]

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[7] Ibid.

[8] Peter Maggs, "Unification of Law in Eastern Europe," American Journal of Comparative Law, XVI (1968), pp. 107-126.

Developments in the Socialist Commonwealth

The Soviet-initiated international organizations, supposedly institutionalizing socialist law, have not been altogether successful. As socialism has spread and developed, the Soviet Union has become less able to control the course of this development. The "equal and sovereign states" of the socialist commonwealth have become increasingly dissatisfied with the effects of Soviet domination. Especially in the economic sphere, the costs of serving mostly Russion national interests have imposed great burdens on the other national economies. Demands for greater consideration to individual national economies are accompanied by others for an equal voice in policy-making. The Soviet Union is finding it increasingly difficult to deal with the side-effects of over-centralization.[9]

Nationalist feelings are on the rise in Eastern Europe. The socialist states want to exercise autonomy in fact as well as in theory and to determine their own road to socialism. One state--Yugoslavia--has been successful in reaffirming its sovereignty, having broken away from the Eastern Bloc. The Soviet leaders have not been able to entice nor to coerce the Yugoslavs to resubmit to Soviet domination. Albania, because of its minimal importance to the Soviet Union, also was able to resist the domination of Moscow. The most spectacular of dissentions in the socialist world is the Sino-Soviet split, a rift between the two most powerful socialist states. This

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[9]Korbonski, p. 56.

break has severely damaged Soviet claims to a unified socialist system as described in socialist international law.[10]

The other socialist states--neither powerful enough to enforce their autonomy nor insignificant enough for the benefits of coercion to outweigh costs--have been forced to deal with their problems using international law on Soviet terms. In 1968, the issue reached crisis proportions in Czechoslovakia. The events there and the formulation of the Brezhnev Doctrine determined a reference point for developments since. Because of its importance, the Czechoslovakian invasion and the Brezhnev Doctrine will be discussed at some length in the next chapter.

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[10] Ibid., p. 56.

CHAPTER VIII

THE BREZHNEV DOCTRINE

The socialist states, as we have seen, are committed to uphold the principles of voluntary association, equality, territorial integrity, and noninterference in the internal affairs of fellow socialist states. Yet, on August 20, 1968, Soviet troops, along with those of other Warsaw Pact countries, invaded Czechoslovakia. Several months later the Czechoslovakian government was in the hands of new leaders. The chain of events in the crisis and the reactions to it have influenced Eastern European politics and, especially, law since that time. The "doctrine" formulated to explain the invasion is an important one.

The Building of the Crisis

The August invasion was the culmination of tensions that had been developing throughout the previous months. The Czechoslovakians, having suffered economically from Soviet planning, were a restive people, stirred by growing nationalist sentiments. In January of 1968 the conservative, pro-Soviet Novotny regime toppled and was replaced by a government led by the more liberal Anton Dubcek. The Dubcek government soon initiated major economic adjustments, one of

which was a new system of "market socialism." To add to the suspiciously capitalist tendencies, censorship was abolished. Other forms of democratization soon followed.[1]

The scope of Czechoslovakia's moves were not limited to its boundaries. People in other countries were excited by the reforms. Influenced by a socialist domino theory, however, the government of Poland and East Germany appealed to the Kremlin. Both of these regimes, conservative and somewhat dependent on Soviet support, felt threatened. Accordingly, the Soviet leaders began to impress upon the Dubcek government the dangers of their situation. Several attempts for a political settlement were made by negotiation, but were unsuccessful. Dubcek, caught between domestic demands for more freedom and Soviet demands for greater caution and control, lost control of the course of events. Finally, the Politburo decided that force was necessary to preserve socialism in Czechoslovakia. Despite unexpected resistance to the invasion, within a few months political pressure backed by military force succeeded in reversing the reforms and installing a more easily controlled regime.[2]

Justification of the Invasion

It was necessary that the Soviet Union make some statement to answer charges from the West and elsewhere that the Warsaw Pact action was a violation of international law. The result is what is known as

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[1]Korbonski, pp. 58-63.

[2]Ibid., pp. 58-63.

the Brezhnev Doctrine. First published in Pravda on September 26, 1968, the theory was given official sanction by First Secretary Brezhnev's statement at the Fifth Congress of the Polish United Workers' Party. The Brezhnev Doctrine proposed no new principles of international law, but it placed a new emphasis on Soviet interpretations of socialist international law. Tailored to meet Soviet needs, the Brezhnev Doctrine was a significant departure from the image of objectivity that the Soviets had been cultivating for the past decade. In brief, there was a return to the idea that the Soviet Union serves the cause of progress, its actions being therefore legal.[3]

The editorial in Pravda in September by Kovalev set forth the framework of the doctrine that Soviet leaders needed to justify their use of force. The main theme was that the defense of socialism, being the highest priority in socialist international law, made necessary and even praiseworthy the Warsaw Pact actions. Resort to force in defense of socialism is permissible. This is almost always interpreted by Soviet jurists as applying to conflict between socialist and capitalist elements. According to communist ideology, peace reigns in relations among socialist states. Obviously, there is a contradiction here. The contradiction was rationalized, although not extremely convincingly, by the assertion that force was exerted against anti-socialist elements.[4]

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[3]Bernard Ramundo, "Czechoslovakia and the Law of Peaceful Coexistence," Stanford Law Review, XXII (May 1970), p. 971.

[4]Ibid., p. 972.

One will remember that the Soviets have been champions of the principle of the sovereignty of nation-states. Was not the invasion a violation of national sovereignty and of territorial integrity as well? The Soviets say this was not a violation. On the contrary, the invasion protected Czechoslovakian sovereignty from counter-revolutionary threats. These threats, of course, originated in the capitalist system. In addition, it is the duty of socialist states to work for the good of the international socialist movement. National interests should be subordinated to international interests.[5] Since the Soviet Union remains the overwhelmingly dominant power in the Eastern European bloc, the Russians determine of what these interests consist.

The socialist obligation to render mutual and fraternal assistance served a valuable function in the explanations of the Brezhnev Doctrine. The assistance principle justified the action as not violating the law of non-intervention in the internal affairs of another state. It is the duty of socialist countries to preserve the self-determination of the Czechoslovakian people, for self-determination would be destroyed if capitalism were to be imposed upon them from without. The destruction of socialism would result in the loss of independence. All these points, as mentioned before, are not especially new, but represent a "hard-line" interpretation of previously established principles.[6]

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[5] Ibid., p. 972.

[6] Ibid., p. 973-6.

Besides the hard-line elements in Kovalev's Pravda editorial, Brezhnev's speech elaborated some additional points, discussed by R. Judson Mitchell. Mitchell's thrust was on the impact of Soviet ideology rather than international law itself, but the former most definitely influences the latter. Brezhnev commented on areas of contradiction within the socialist system. Such statements are quite unusual, since in the past the Marxist dogma of the resolution of all contradictions in the socialist system was adhered to closely. Brezhnev admitted the presence of class antagonisms due to remnants of the bourgeois element. Furthermore, he cited errors in organization, the presence of uneven economic development, the rise of nationalistic feelings, and revisionist ideology. However, he reaffirmed the role of the Party as the vanguard of communism. The leadership of the Party is even more necessary than usual due to an intensification of the struggle against capitalism.[7]

The contradictions within the socialist systems were linked the threats from outside of the system. The result of this theory has been the reversal of Lenin's theory of the weakest link of capitalism. Lenin, it will be remembered, stated that the socialist revolution would begin at the weakest spot in the capitalist system. Brezhnev in 1968 found the capitalists to be attacking socialism at its weakest link.[8] The close similarity between the two "weakest link" theories

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[7]R. Judson Mitchell, "The Brezhnev Doctrine: Implications for Communist Ideology," presented at Southern Political Science Association, International Studies Association, Gatlinburg, Tennessee, Nov. 11, 1971, pp. 6-7.

[8]Ibid., pp. 23-28.

is hardly the result of a conscious act. It is a reflection upon the nature of socialism in the Soviet Union today. The Soviet Union is in an essentially conservative position. It wishes to retain the influence that it exerts upon the other socialist countries in Eastern Europe. It is willing to use force to preserve its influence.

The Brezhnev Doctrine and Future Policy

The Brezhnev Doctrine will no doubt influence the future development of socialist international law. Although the nominal independence and sovereignty of socialist countries will continue to be stressed, the reality of Soviet domination, backed by the threat of force, will continue to effectively curtail that independence. It is a mistake to assume that the Soviet domination is as pervasive as it was immediately following World War II and the establishment of the satellites. For instance, Yugoslavia has been successful in affirming her sovereignty and is often vocal in criticizing the Soviet Union. This suggests the pragmatic nature of Soviet actions, based on a fairly rational assessment of the pros and cons of coercive acts. The Czechoslovakian invasion took place not just because it asserted its sovereignty. Its strategic position in relation to the West, the domestic climates of its socialist neighbors, and several other factors caused perceptions of major threats by some Communists outside Czechoslovakia. In the case of Yugoslavia, the Soviets would encounter greater costs and benefits from the submission of that country.

Comparisons with the United States

The United States and other countries in the West were outraged by the invasion of Czechoslovakia and promptly registered their strong disapproval. They charged the Soviet Union with violation of international law. The Brezhnev Doctrine, they said, was an ex post facto justification of a most distorted nature. However, a few scholars accredited the United States with setting precedents for the Soviet actions. Said Thomas M. Franck and Edward Weisband, ". . . virtually every concept of the Brezhnev Doctrine can be traced to an earlier version of identical rights by the U.S. vis-a-vis Latin America." They note that law is based on reciprocal action and the development of mutual reciprocal application of normative assumptions.

> The Brezhnev Doctrine served to document that the Soviet Union understood that they were acting in accordance with established, reciprocal norms of the international system.[9]

The last statement is exaggerated, for it seems unlikely that the Soviet Union had any such assurance of those norms. Yet there were the examples of United States intervention that must have been taken into consideration.

The United States' history of intervention has generally been overlooked, while criticisms of the incursions of other nations are frequent. It seems that a brief discussion of the U.S. precedents of the Soviet invasion is warranted. In June of 1954, the Central

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[9]Thomas M. Franck and Edmund Weisband, "The Johnson and Brezhnev Doctrines; The Law You Make May Be Your Own," Stanford Law Review, XX (May 1970), pp. 979-982.

Intelligence Agency engineered the overthrow of Arbenz, the Communist-oriented President of Guatemala. The U.S., with the support of the Inter-American Conference, established that Communist aggression was taking place and that an attack which "saves" a people from a leftist regime is self-defense. If the U.S. claims that communism is incompatible with freedom, is it surprising that the Soviet Union asserts that capitalistic tendencies are a threat to socialism?

Despite its assurances of no aggressive intentions toward Cuba, in 1960 the U.S. sponsored the clumsy Bay of Pigs invasion and then attempted to keep the matter out of the Security Council and in the anti-Communist Organization of American States. The U.S. asserted its right to set norms and to try to create hemispheric solidarity. Later, during the 1962 missile crisis, the right to determine when self-interest requires military force was stated.

The invasion of the Dominican Republic in 1965 was the most serious of U.S. interventions to date. The action was unilateral and was intended to insure that the government of the Dominican Republic be anti-Communist and favorable to the interests of the U.S.[10]

In these examples, according to Franck and Weisband, the Soviet Union had observed the U.S. acting to preserve its sphere of influence in Latin America. The "norms" established, or at least the practices used, included that (1) a member of an ideological bloc cannot withdraw, (2) the community may impose norms, (3) compliance to

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[10] Ibid., pp. 990-1010.

the norms may be judged by members of the community, (4) force may be used on derelict members--in which case it is not aggression, but collective self-defense, and (5) invasion may take place under the treaty of the community.[11]

The moral justifications of both the U.S. and the U.S.S.R. are questionable. Whether or not intervention is an established norm as Franck and Weisband suggest, it is common in a powerful nation's sphere of influence. According to Rupert Emerson:

> The realistic issue is still not whether a people is qualified for and deserves the right to determine its own destiny, but whether it has the political strength, which may well mean the military force to validate its claim.[12]

Intervention is a political reality--one that has high risks. While intervention is a violation of the principles of international law, the Soviet Union, as well as the U.S., does intervene. The Nixon Doctrine, in principle at least, is designed to alter future American behaviour in this respect. Whether it does in practice, and whether the Soviets follow suit, will be interesting to observe.

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[11] Ibid., pp. 986-987.

[12] Rupert Emerson, "Self Determination," American Journal of International Law, LXV, no. 3 (July 1971), p. 475.

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