Pace International Law Review

Volume 2 | Issue 1 Article 1

September 1990

"New Thinking" in Soviet Approaches to International Politics and Law

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PACE UNIVERSITY
SCHOOL OF LAW

YEARBOOK OF
INTERNATIONAL LAW

Volume 2 1990

LECTURE

"NEW THINKING" IN SOVIET APPROACHES TO INTERNATIONAL POLITICS AND LAW†

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No more startling evidence of "new thinking"[1] among Soviet policy makers formulating attitudes toward foreign policy and international law could be found than Soviet Foreign Minister Shevardnadze's admission in 1989 that the much-debated

† The third annual Blaine Sloan Lecture was delivered on March 15, 1990. Presented in honor of Blaine Sloan, Professor Emeritus of International Law and Organization at Pace University, the lecture series is delivered each year to the University and Law School community in order to promote scholarly debate in international law.

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[1] The phrase "new thinking" first appears in M. GORBACHEV, PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD xiii (Perennial Libr. ed. 1988). "The fundamental principle of the new political outlook is very simple: *nuclear war cannot be a means of achieving political, economic, ideological or any other goals.*" *Id.* at 126 (emphasis in original).

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Krasnoyarsk Radar Installation had violated an international treaty.[2] For four years Soviet officials had refused to accept the American charge that the installation violated the Anti-Ballistic Missile (ABM) Treaty.[3] The installation is to be dismantled.

In the same speech to the USSR Supreme Soviet, the Foreign Minister provided another surprise. He declared that the sending of Soviet troops to Afghanistan "had violated the norms of behavior and gone against human interests."[4] Seven years earlier when troops marched into Afghanistan the members of the Soviet Association of International Law had taken no such position. On the contrary, the move had been justified as a response to the Afghan Government's call for aid in resisting threats from hostile neighbors and as a manifestation of the international duty of Soviet soldiers to assist their working class brothers placed in danger.[5]

While the radar and Afghan violations might be evaluated as isolated episodes, a more far-reaching denunciation of past policies came from the Foreign Minister fifteen months earlier. He declared that the long-standing priority given since the 1917 Russian Revolution to foster the "class struggle" in the formulation of foreign policy was to be abandoned.[6] The supreme aim now was to be the achievement of peace for mankind. While Soviet policy makers will not ignore revolutionaries beyond Soviet frontiers, for they offer sympathy and even aid to peoples seek-

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[2] *Shevardnadze: A New Look at Foreign Policy*, 41 CURRENT DIG. SOV. PRESS, No. 43, at 1, 5 (1989) (trans. from *Pravda*, Oct. 24, 1989, at 2) (hereinafter *Shevardnadze*). The speech was commented upon by a Soviet journalist, who remarked:

> [N]ot one commentary about that truly sensational admission has appeared in the Soviet press. This is [also] an example of the momentous inertia of the past among our writers on international affairs. Yes, we are still under the spell of old taboos, even when taboos are being lifted "from above" and sensitive subjects are being broached publicly in the Supreme Soviet.

S. Kondrashov, *On Foreign Policy and Waste*, SOVIET LIFE (Embassy of the USSR, Washington, D.C.) Dec., 1989, No. 12 (399), at 3.

[3] Limitation of Anti-Ballistic Missile Systems, May 26, 1972, United States of America-Union of Soviet Socialist Republics, 23 U.S.T. 3435, T.I.A.S. No. 7503.

[4] *See Shevardnadze*, *supra* note 2, at 3.

[5] At its annual meeting in 1980, the Soviet Association of International Law unanimously adopted a resolution "condemning the attack of the imperialist states and the Peking hegemonists on the sovereignty of independent Afghanistan." *Summary Report of XXIII Annual Meeting*, 1980 SOV. Y.B. INT'L L. 293 (1981).

[6] *See* Shevardnadze, *Soviet Foreign Policy's New Look*, 40 CURRENT DIG. SOV. PRESS, No. 30, at 13, 14 (1988) (trans. from *Pravda*, July 26, 1988, at 4).

ing to oust colonial governments, they will place such activity second to the preservation of peace.

When he published *Perestroika* in 1987, M.S. Gorbachev gave the signal to Soviet international lawyers to widely develop the policy of "rethinking." To justify this about-face in Soviet policy he cited Lenin, saying "[M]ore than once he spoke about the priority of the interests common to all humanity over class interests."[7] Gorbachev argued that "with the emergence of weapons of mass, that is, universal destruction, there appeared an objective limit for class confrontation in the international arena: the threat of universal destruction."[8]

Lest he be thought to be deserting the Third World with his evident about-face, Mr. Gorbachev reported that he had told Mrs. Thatcher of Great Britain that his Soviet people sympathize with liberation movements of peoples fighting for social justice.[9] One of his jurists was prompted by that position to write in a journal designed for Latin Americans that international law justified resistance by the developing world toward paying their debts incurred while colonies.[10] Yet, Mr. Gorbachev drew a distinction between such bating of the creditor nations and war. In his view class solidarity could no longer be allowed to ignite a war that might destroy universal human interests.

Another of his jurists, I.I. Lukashuk,[11] encapsulated "new thinking" when he wrote, "[i]t is a philosophy of action to save mankind. It is concerned with the methodology of conducting international affairs in a nuclear/space age."[12] Lukashuk may provide a clue to the motivation for "new thinking" when he refers to the nuclear age. He and his Ukrainian people had experienced the devastation caused by the Chernobyl fire and subsequent emission of radiation. Not only the Ukraine, but the entire Soviet Union's people had learned that radiation destroys

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[7] *See* GORBACHEV, *supra* note 1, at 145.

[8] *Id.* at 132.

[9] *Id.* at 161-62.

[10] M.J. Lazarev, *Mezhdunarodno-pravovoi aspekt zadolzhennosti* (*The International-Legal Aspect of Indebtedness*) LATINSKAIA AMERIKA, No. 3, at 22-28 (1988).

[11] Lukashuk is a noted Ukrainian professor of international law, and has represented the Ukrainian Republic to the Legal Committee of the United Nations on several occasions.

[12] Lecture by I.I. Lukashuk, *The "New Political Thinking" and International Law*, Institut für Internationales Recht an den Universität Kiel, at 6 (15 Nov. 1988).

peoples on a wide scale. Thousands of Ukrainians and Byelorussians had to be moved from their homelands, and many died from exposure before they could be moved.

COMPARING "NEW" AND "OLD"

Of course, "new thinking" has to be seen in light of what had gone before. The past record is full and has been chronicled by numerous scholars.[13] International law was denigrated as the new Soviet Russia emerged from World War I. Leon Trotsky, as Commissar of Foreign Affairs, was delegated to make peace with the Imperial German Army in 1917. As a fiery revolutionary, Trotsky was not prepared to let pass the opportunity to foment revolution, which he expected to follow the war — even in Germany. His slogan, as he entered the negotiation was "No Peace—No War."[14] His expectation that a German revolution would force peace upon the Army from within proved to be illusory. Lenin, however, anticipating further devastation by a renewed German advance across the steppes, withdrew Trotsky and instructed his negotiators to make peace at any cost. In effect, Lenin was recognizing the potential of international law as a means of saving the fledgling Soviet state.

The Brest-Litovsk Peace Treaty[15] stands as evidence of Lenin's flexibility in accepting doctrinally distasteful measures in order to save his state. However, it was a grudging acceptance. Lenin was not prepared to accept the body of general international law that had been accumulated over the preceding century. In his eyes it was tainted by its creators—his enemies, the Imperialist powers of Europe. In his view, this body of law protected capitalists. It was "bourgeois." Within its norms there lurked danger to a regime avowedly bent on destroying capitalism.

An obvious and immediate danger in the post-war world

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[13] The earliest study in English was T.A. TARACOUZIO, THE SOVIET UNION AND INTERNATIONAL LAW (1935). Perhaps the most extensive is K. GRZYBOWSKI, SOVIET PUBLIC INTERNATIONAL LAW: DOCTRINES AND DIPLOMATIC PRACTICE (1970). A recent brief summary of early views appears in Butler, *International Law, Foreign Policy and the Gorbachev Style*, 42 COLUM. J. INT'L AFF. 367 (1989).

[14] L. TROTSKY, MY LIFE 381, 383 (1931); G. KENNAN, RUSSIA AND THE WEST UNDER LENIN AND TROTSKY 43 (1961).

[15] Treaty of Brest-Litovsk, Mar. 3, 1918.

was presented by the claims filed by Western powers against the Soviet treasury for repayment of debts incurred by the Tsarist and Provisional Governments. In Lenin's view these debts had been incurred to support governments hostile to social change. He argued with a question: Why should a government emerging from a revolutionary change be required to support the international law norm on payment of debts by successor governments?[16] He believed that a social revolution broke the chain. To Lenin, power passing from one group of a class to another group from within the same class was not a coup.

In spite of this position, which has been held by the Soviet Government to the present day, Lenin found it necessary to compromise in the interests of his new state. However he would compromise only on a selective basis: no general recognition of international law was to occur. One example of this compromise was his position on the issue of state representation abroad. Lenin thought the diplomatic ranking established by the old Vienna Treaty[17] was offensive. He refused to appoint his state's representatives as Ambassadors and Ministers. They would be called by a new name, *polpred*,[18] which meant "fully empowered representative." But this put them at the end of the protocol queue, and it removed their protection under international law. When the Soviet *polpred* in Switzerland was assassinated, Lenin made his concession. He brought an action for reparations.[19]

In a similar vein, an exception had to be made to Lenin's general denunciation of Tsarist treaties as unequal and forced upon weaker states. The need for this exception was raised by the issue of demarcation of the Sino-Soviet frontier. The demarcation had been established over time through treaties signed with China each time Tsarist armies had been victorious. Soviet governments have always demanded that this frontier be recognized by China, and have been irked when the Chinese have

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[16] *See* L. FISCHER, THE LIFE OF LENIN 559-60 (1964). The official Soviet position was drafted by Chicherin, the Foreign Commissar, who stressed the need to recognize tsarist debts. It was approved by Lenin, and appeared in a conciliatory statement to Western governments. "The Russian government 'is deeply persuaded that no nation is obliged to pay the cost of the chains it has worn for ages.' " *Id.* at 560.

[17] Congress of Vienna, 1815, and Congress of Aix-la-Chapelle, 1818.

[18] This is an abbreviation of the words *polnyi predstavitel.*

[19] *See* TARACOUZIO, *supra* note 13, at 188.

published maps that contain a different demarcation in the Far East.

A Theory to Support Selective Recognition

Soviet academics have a noted penchant for seeking philosophical foundations for novel courses of action. In 1924, they began to speculate on what to call the Soviet practice of accepting some norms of general international law and rejecting others. Professor Eugene A. Korovin was the first to take a position. In his book *International Law of the Transitional Period*,[20] he maintained that a new international law was being formed by the new Soviet Russia (in its advance from capitalism to socialism) as it relied upon some norms and rejected others to advance its interests.

Korovin's colleagues expanded upon his position and argued that the law was incorporating a new content, even though old forms were still utilized in practice. No one in the mid-1920s expected international relations to be conducted between fraternal communist parties. The much quoted speech by Trotsky when he entered the old Tsarist building to greet the Foreign Office staff seemed visionary. Trotsky is reputed to have shouted, "I have come to close up the shop."[21] The Berlin "Soviet" on which Trotsky had based hopes for revolutionary change had been defeated, as had the Hungarian "Soviet." Revolution in China seemed unlikely. It was time to talk peace, and Korovin's book symbolized the new attitude.

For many years, the United States Government looked askance at Soviet leaders' intentions. No thought was given to recognition and establishment of diplomatic relations until 1933. The principal impediment to resumption of formal ties was probably the Communist International. This body, founded by Lenin in 1919, consisted of representatives from various communist parties from around the world. It had always been engaged in preparing blueprints for revolution by specifying the most effective measures to be taken in various areas. The Soviet Com-

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[20] E.A. Korovin, Mezhdunarodnoe Pravo Perekhodnovo Vremeni (International Law of Transitional Period) (1923).

[21] *See* V. Serge and N. Sedova Trotsky, The Life and Death of Leon Trotsky, 72 (A. J. Pomerans trans. 1975).

munist Party was host to its staff, although the Soviet Government professed to have no relation to it. In American eyes it remained a relic of the heady revolutionary enthusiasm of the early days.

In 1933, President Franklin D. Roosevelt began negotiating an agreement with the Soviet Foreign Minister that would lead to recognition of the Soviet Government. Roosevelt feared that the Communist International might continue to attempt to undermine the United States Government through its support of the Communist Party of the U.S. In an effort to reduce the likelihood of such support, Roosevelt required the Soviet envoy, Maxim Litvinov, to sign a commitment:

> [n]ot to permit the formation or residence on its territory of any organization or group—and to prevent the activity on its territory of any organization or group . . . which has as an aim the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in, the political or social order of the whole or any part to the United States, its territories or possessions.[22]

In 1935 the Communist International convened its World Congress with American Communists in attendance as delegates. President Roosevelt protested, through his Secretary of State Cordell Hull, but to no avail. The Soviet Foreign Ministry replied that the Soviet Government could not be held accountable for an agency in which it played no part. Of course, all the world knew that the Communist Party of the Soviet Union played a major part in supporting the Communist International, and that the Communist Party monopolized power in the Soviet Union. Roosevelt found the Soviet Government's reply unacceptable, and mistrust developed between the two governments that was not overcome until Hitler's armies invaded the USSR in 1941. At that time, Roosevelt and Winston Churchill decided that the fate of the West hung on the defeat of Hitler and that the Soviet armies would be an important force in the war. Both agreed to aid Stalin in fighting the war, although the United States was not yet a combatant. Stalin responded by "abolishing" the Com-

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[22] Letter from Maxim Litvinoff to President Franklin D. Roosevelt (Nov. 16, 1933), *reprinted in* The Establishment of Diplomatic Relations With the Union of Soviet Socialist Republics, DEPARTMENT OF STATE: EASTERN EUROPEAN SERIES, No. 1, at 5 (1933).

munist International, but there was no confidence in Washington that Communists had abandoned their crusade against the Capitalists. Class struggle continued to be in the air. Mistrust was evidenced in planning the peace at the Yalta Conference of 1943.[23] Roosevelt and Churchill sought commitments from Stalin that Eastern European states upon liberation from the German armies would conduct elections to establish governments that the majority desired.[24]

When Stalin's troops advanced across Eastern Europe to defeat Hitler in Germany, they brought with them well-prepared groups of local communists who established communist-dominated governments. In alarm, the Western powers formed the North Atlantic Treaty Organization (NATO),[25] and what came to be called the "cold war" was born. The U.S. Congress enacted the Smith Act[26] and the Communist Control Act,[27] and American Communists were prosecuted in the courts under this legislation until the 1960s.[28] Americans were confident that the Soviet Government supported the American Communists and continued to foster revolution elsewhere in the world. To Americans generally, international law seemed to have been put at a lesser priority than "class struggle," even more so when Soviet sponsored motions in the United Nations were analyzed.

KHRUSHCHEV INTRODUCES A MODIFICATION

When Nikita Khrushchev inherited Stalin's mantle soon after Stalin's death in 1953, he revised the Communist Party's

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[23] For recollections of the Yalta Conference, see C.E. BOHLEN, WITNESS TO HISTORY 1929-1969, 173-201 (1973).

[24] For recollections of the Teheran Conference from the keeper of the record, see *id.* at 134-54.

[25] North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, T.I.A.S. No. 1964, 34 U.N.T.S. 243.

[26] Smith Act of 1948, 18 U.S.C. § 2385 (1990).

[27] Communist Control Act of 1954, 50 U.S.C. § 841 (1990).

[28] *See, e.g.*, Yellin v. United States, 374 U.S. 109 (1963); Emspak v. United States, 349 U.S. 190 (1955); Dennis v. United States, 341 U.S. 494 (1951); Rogers v. United States, 340 U.S. 367 (1951) (prosecutions under the Smith Act). For litigation involving the Communist Control Act, see *e.g.*, Communist Party of the United States v. Subversive Activities Control Board 367 U.S. 1 (1961); Scales v. United States 367 U.S. 203 (1961); Communist Party, U.S.A. v. Catherwood, Industrial Commissioner 367 U.S. 389 (1961).

Program to insert a statement on foreign policy, using words which had been hallowed by Lenin. These words had represented Lenin's effort to save the fledgling Bolshevik regime in Soviet Russia from the infinitely stronger forces of the Allied Powers. He had coined the phrase "peaceful coexistence."[29] However, Khrushchev was not prepared to abandon the Third World. He qualified the affirmation of "peaceful coexistence" as the policy of the Communist Party by adding that it was established to provide peaceful conditions for building communist society in the USSR and for developing world socialism.[30] To many Western scholars Khrushchev was only calling an armistice, the better to catch his breath for more class struggle.

Fortuitously, Gregory I. Tunkin who taught international law in Moscow seized upon the Party's statement of policy to declare that the Soviet Union was now proposing a "law of peaceful coexistence."[31] This phrase was introduced into an international forum at the Dubrovnik Conference of the International Law Association in 1956. The Yugoslavian delegation proposed that this nongovernmental association of scholars adopt it as a project for research.[32] At the time, the phrase had such imprecise meaning that Western jurists in the Association thought that they should move with caution. The American branch of the Association took the lead in seeking to draft a definition for "peaceful coexistence" which would meet Western concepts of what the principal norms of international law in such a concept should be.[33] They wanted to be sure that it would mean more than an armistice in the class struggle. As has often happened,

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[29] Khrushchev, *Report to the Twentieth Congress of the Soviet Communist Party*, Feb. 14, 1956, *reprinted in* G. HUDSON, R. LOWENTHAL & R. MACFARQUHAR, THE SINO-SOVIET DISPUTE 43-44 (1961).

[30] *See* 1961 Communist Party Program, (Peaceful Coexistence and the Struggle for World Peace) in SOVIET COMMUNISM: PROGRAMS AND RULES. OFFICIAL TEXTS OF 1919, 1952 (1956), 1961, at 63-67 (J.F. Triska ed. 1962).

[31] *See* G.I. Tunkin, *Mirnoe sosushestvovanie v mezhdunarodnom pravo* (*Peaceful Coexistence in International Law*), SOV. GOS. & PRAVO, No. 7, 3-13 (1956).

[32] *See* M. Bartos, *Aspect juridique de la coexistence pacifique active entre êtats* in THE INTERNATIONAL LAW ASSOCIATION, REPORT OF THE FORTY-SEVENTH CONFERENCE, DUBROVNIK, 1956, 17-39 (1957). Subsequent steps taken in various international fora are chronicled in J. Hazard, *Legal Research in Peaceful Coexistence*, 51 AM. J. INT'L L. 63 (1957).

[33] The drafts presented by the American and Soviet Branches of the International Law Association are published in 57 AM. J. INT'L L. 88, 92-94 (1963).

the debate in the Association was carried over into the halls of the United Nations where Eastern European jurists proposed that the U.N. Sixth (Legal) Committee take a hand in defining the term. Perhaps in response to the American argument that the term should smack not of continuing struggle under an armistice but of cooperation in maintaining peace through law, the Yugoslavian jurists suggested that the goal should be "active peaceful coexistence."[34]

As the debate continued, Western jurists in the U.N. came to feel that the term was odious as a slogan because it incorporated the policy of the USSR rather than general international law to which all had subscribed over decades. They suggested that any new statement of principles incorporate the concept of "cooperation." Finally, the draft resolution was entitled "Friendly Relations and Cooperation," and with this title it moved through the various chambers until it was adopted in 1970 on the twenty-fifth anniversary of the Organization.[35]

To Soviet authors on this topic, the new term seemed to be only a euphemism for their favored term, for they continued to write of the resolution as incorporating the principles of "peaceful coexistence." Evidently, they still thought it necessary to hold to a shadow, if not more, of the long favored and fostered expectation that world revolution led by communists would eventually triumph in the class struggle. Their attention focussed on developing countries, because the Western world had outgrown its malaise following the Second World War. It seemed unlikely that communism would appeal to many in Western lands or in Asia, except for China and its immediate neighbors in Korea and Vietnam.

In this environment Tunkin propounded in 1970 a revision of his theory.[36] It was stated in the form of an explanation of the process through which international law was emerging. He argued that norms were agreed upon through a "concurrence (co-

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[34] *See* sources cited *supra* note 32.

[35] The full title is The Declaration of Principles in International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, Oct. 24, 1970, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8082 (1970).

[36] For extensive treatment of the topic, see G.I. TUNKIN, THEORY OF INTERNATIONAL LAW 21-48 (W.E. Butler trans. 1974).

ordination) of wills."[37] It seems that he was inspired by the Marxist doctrine that law represents the will of the ruling class in each society. Such a theory could be supported in some countries and during some historic periods, such as the period following the French Revolution. Using this theory to explain international law however seemed problematic to other authors such as Korovin. Marxists argued that Western law was inspired by capitalists protecting their interests while Soviet law was formulated to protect the working class, or socialist interests. Difficulty arose in deciding how to characterize a law binding on both groups of states if it emerged from two different sources. Tunkin's explanation of "concurrence of wills" seemed to address this difficulty and was accepted by most of his colleagues.

It is possible that Tunkin's concept of a concurrence creating a new "will" (something between the poles of bourgeois and socialist class distinction) resembles a reconsidered view of Korovin's "law of the transitional period." In Korovin's view, the two hostile wills would merge into a concurrence of wills for the purpose of keeping the peace—a peace from which each ruling class hoped to benefit.[38] This explained the Soviet goal of "peaceful coexistence" as a transitional condition until socialism might eventually triumph.

However, this concept was not entirely clear. Some thought that Tunkin had a lesser expectation of the ultimate triumph of socialism than Korovin for he began to say that his goal was "cooperation." Perhaps Tunkin had only lengthened the transitional period. Korovin had to be read in light of what was being written in the mid-1920s, a period in which Soviet scholars argued that coercion as manifested in law would, as Marxists expected, "wither away" as class struggle in domestic society abated.[39] Soviet draftsmen began to prepare codes offering judges opportunities to use broad discretion in determining how those who were brought before them should be sentenced.[40] Civil

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[37] G. TUNKIN, LAW AND FORCE IN THE INTERNATIONAL SYSTEM, 63 (1985).

[38] *See* KOROVIN, *supra* note 20, at 135-36.

[39] Lenin discusses the Marxist and Engelsian concept of "withering away" in LENIN, THE STATE AND REVOLUTION (1919), *reprinted in* THE LENIN ANTHOLOGY 311, 320-25, 369-84 (R.C. Tucker ed. 1975).

[40] *See* Hazard, *The Abortive Codes of the Pashukanis School* in CODIFICATION IN THE COMMUNIST WORLD 145-75 (F.J.M. Feldbrugge ed. 1975).

law was already being dropped from teaching programs and replaced by an economic law governing the relations between state enterprises. Communism seemed to be in the near offing. In Tunkin's time, such expectation of immediate communism was accepted as visionary. He had reason to focus attention on the immediate need of his country, which he interpreted as being a calm international environment.

WESTERN REACTION TO ACCOMMODATION

Quite frankly, few Western jurists thought it necessary to discern a will behind the formation of international law in which opposing class-oriented governments had concurred. In pragmatic terms popular among Westerners, treaties were negotiated to seek agreement between statesmen representing governments who defended a variety of policies. These agreements might be based on any number of desiderata, quite distinct from class struggle motivation. Supporters of such pragmatic explanations were heartened when a distinguished Soviet jurist with experience in the Human Rights division of the United Nations Secretariat, Valerie Kartashkin, expressed his disagreement with Tunkin's "concurrence of wills" theory.[41] Kartashkin simplified the explanation by saying that agreements result from "compromise." He seemed to sense no need to refer to "wills."[42]

A new spirit seemed to be emerging within the United Nations. Sharp contrast between old and new thinking became evident in proposals made by the socialist delegations. Prior to 1934 Stalin had castigated the U.N.'s predecessor, the League of Nations, as a cabal of capitalist powers to be shunned by the USSR. It was not until Hitler increased the military potential of Nazi Germany and evidenced his hostility toward communists that Stalin began to seek allies in defense of the USSR. He

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[41] Kartashkin argued that there is no coordination of wills of competing socialist and capitalist systems since "in the process of creating norms and principles of international law the will and ultimate aims of a state remains invariable." In his view agreement is reached by compromise in the interest of peaceful coexistence and neither state moves from its basic ideological position. Kartashkin, *The Marxist-Leninist Approach: The Theory of Class Struggle and Contemporary International Law*, in THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW: ESSAYS IN LEGAL PHILOSOPHY, DOCTRINE AND THEORY, 83-84, 101 n.7 (R. Macdonald & D. Johnston ed. 1983).

[42] *Id.*

turned to the League of Nations and asked for membership. Cooperation with Western capitalist-oriented powers in resisting the threat of fascism became the focal point of Stalin's policies for five years. Stalin then sought protection in a new direction. He concluded that Britain and France would not support him, and in 1939 he turned to Hitler and signed the notorious Molotov-Ribbentrop Pact[43] and the then-secret protocol to divide Eastern Europe between German and Soviet spheres of influence.[44]

Stalin was deceived by his partner, apparently to his surprise. The Nazi armies began to roll across the steppes of the Ukraine in 1941. The wartime alliance with the West was formed, leading to development in principle at Dumbarton Oaks for a new League of Nations in San Francisco in 1945. The USSR became a Charter member. Cooperation between East and West looked possible as the basis for reconstruction of a revitalized world, but the euphoria was not to last.

This is not an occasion requiring retracing of the years of disillusionment for the Western governments. Those years are well remembered. The Security Council of the United Nations was made impotent by vetoes. The General Assembly became a voting block for the Second and Third Worlds in the eyes of some Western Chiefs of Permanent Missions.

The International Court of Justice was ignored as unlikely to be impartial in deciding any dispute between East and West, although a Soviet and a Polish jurist were both elected to sit. There was no hint that the USSR would accept compulsory jurisdiction, even when disputes over interpretation of treaties ratified by the USSR would normally be heard by the Court under dispute resolution provisions. The Soviet Government, in ratifying these treaties, took care to file a reservation against such jurisdiction.[45]

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[43] Aug. 23, 1939. *See Molotov-Ribbentrop Pact and Protocol*, 40 CURRENT DIG. SOV. PRESS, No. 34, at 7 (1989) (trans. from *Pravda*, Aug. 18, 1989, at 1).

[44] Address by N.S. Beryzhkov, Columbia University (Oct. 10 1989). Stalin's interpreter and biographer, N.S. Beryzhkov, gave this explanation for Stalin's pact with Hitler during reminiscences given at the Harriman Institute, Columbia University on Oct. 10, 1989. The cassette recording of the lecture is on file at the publications office of the Harriman Institute.

[45] *See, e.g.*, Reservation to Vienna Convention on the Law of Treaties, Ved. Verkh.

INTERNATIONAL LAW MOVES TOWARD SEGMENTATION

International law as a universally accepted body of norms was increasingly threatened. One of the Soviet scholars, later to be elected a Judge on the International Court of Justice, published a treatise in which he argued that a new socialist international law was coming into existence as socialist states multiplied and came to speak of themselves as members of a "socialist commonwealth."[46] Members of this commonwealth and Marxist oriented states in Africa and Asia claimed to look to socialist international law as governing their relations. The law of "peaceful coexistence" was reserved for relations between socialist and capitalist blocs.

Tunkin came to oppose this differentiation, perhaps sensing future danger to Soviet interests should there be no generally accepted law binding all states to the same terms. He began to argue that there was a "general international law" comprised of norms established by custom and binding all states.[47] His views would hardly have appealed to those of his predecessors who had concluded that international law was bourgeois because of its origin in the practice of imperialist states during the nineteenth century. However, the pendulum was swinging away from Western conceptions of international law within the General Assembly of the United Nations and toward the views of the increasingly numerous members of the Third World. Supported often by the avowedly socialist states, the character of international legal norms being applied by much of the world's chanceries was acceptable to the diplomats of the USSR. Soviet delegates to the Committees of the United Nations concurred in many of the steps leading up to General Assembly resolutions that incorporated new norms. While Western scholars railed

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Sov. SSSR, item 772 (1986).

[46] *See* F. KOZHEVNIKOV, SOVETSKOE GOSUDARSTVO I MEZHDUNARODNOE PRAVO 1917-1947 (OPYT ISTORIKO-PRAVOVOGO ISSLEDOVANIIA) (THE SOVIET STATE AND INTERNATIONAL LAW 1917-1947 (AN EXPERIMENT IN HISTORICAL-LEGAL RESEARCH)), 24 (1948).

[47] Tunkin's views were interpreted in this vein by W.E. Butler in Note, *"Socialist International Law" or "Socialist Principles of International Relations"*, 65 AM. J. INT'L L. 800 (1971). He wrote in criticism of J.N. Hazard's interpretation as posited in Hazard, *Renewed Emphasis on Socialist International Law*, 65 AM. J. INT'L L. 142 (1971). *But see* Osakwe, *Socialist International Law Revisited* 66 AM. J. INT'L L. 596 (1972), supporting Hazard's interpretation. Mr.Osakwe is a former graduate student of Tunkin's.

against the resolutions as efforts to create "instant custom," Soviet scholars piled no such ridicule upon the resolutions.[48]

Gorbachev's "new thinking" is breaking with past attitudes. His strongly expressed support for the United Nations and its associated agencies has been concretized both in the literature emerging from Soviet scholars and in the practice of the Soviet Ministry of International Affairs. Two prominent Soviet internationalists published a paper in early 1988 defining their interpretation of "new thinking."[49] To them it meant: abandonment of the policy of applying force to achieve goals, strict adherence to the rule of law in the conduct of relations, rejection of policies reflecting narrow group interests, recognition of the interdependence of states, voluntary limitation of state sovereignty on a mutual basis, strengthening of international mechanisms of control designed to resolve disputes and to prevent violations of law and even the enhancement of the role of non-governmental organizations. They called for "popular democracy," supplemented, perhaps, by what Mr. Gorbachev had already called a "global consultative council uniting the world's intellectual elite under United Nations auspices."[50]

At the same time, a more junior scholar published a monograph setting forth proposals for strengthening the United Nations.[51] Some of his ideas emerged later when Mr. Gorbachev presented his 1988 address to the United Nations,[52] suggesting that the points to be made by Mr. Gorbachev were already being discussed in the halls of the Academy. In his monograph, Krylov suggested that the Sixth (Legal) Committee of the General Assembly should initiate draft Conventions and that the Security

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[48] This characterization of General Assembly Resolutions has been attributed to the orator giving the Lord McNair Memorial Lecture at the International Law Association 1976 Conference, although it does not appear in the printed version. *See* R.Y. Jennings, *The Discipline of International Law*, in THE INTERNATIONAL LAW ASSOCIATION, REPORT OF THE FIFTY-SEVENTH CONFERENCE, MADRID, 30 Aug., 1976 (1977).

[49] *See* V. Vereshcheten & R. Mullerson, *Novoe myshlenie i mezhdunarodnoe pravo(New Thinking and International Law)* Sov. Gos. & PRAVO, No. 3, 3-9 (1988).

[50] *See* M. Gorbachev, *Reality and Guarantees of a Secure World*, 39 CURRENT DIG. SOV. PRESS, No.38 at 16, 18 (1987) (trans. from *Pravda*, Sept. 17, 1987, at 1); Bortin, *Soviet Leader Calls for Creation of U.N. Elite Grouping*, Reuter Library Report, Sept. 17, 1987.

[51] *See* N.B. KRYLOV, PRAVOTVORSHESTSKAIA DEIATEL'NOST' MEZHDUNARODNYKH ORGANIZATSII (LAW CREATING ACTIVITY OF INTERNATIONAL ORGANIZATIONS) 167-75 (1988).

[52] *See* 48 REPRINTS FROM THE SOVIET PRESS, No. 1, at 5 (Jan. 15, 1989).

Council should hold sessions not only to meet crises, but to perform its obligation under the Charter to survey the international situation. The author also urged that the Security Council invite the heads of state and government to attend sessions to be held not only at Headquarters but at capitals of permanent members of the Council. Finally, he proposed that the long-moribund Military Staff Committee should be revitalized to send military advisers to trouble spots, such as the Persian Gulf during the Iran-Iraq war to prepare factual reports on the situation.

Reflection of "New Thinking" in Practice

Soviet practice began to downgrade the class struggle motivation which had characterized the earlier years. The most electrifying evidence of "new thinking" from the point of view of international lawyers was the official acceptance of compulsory jurisdiction of the International Court of Justice. The USSR enacted legislation accepting compulsory jurisdiction for disputes that arise regarding the interpretation of conventions on genocide, women's rights, political rights, racial discrimination, gender discrimination and torture.[53]

Negotiations are proceeding between the five powers in the Security Council that have veto rights to withdraw reservations to multilateral treaty provisions establishing International Court of Justice jurisdiction when disputes arise over interpretation. Although the negotiations may be extended, there is an expectation that under current thinking, they will be successful.

A straw in the wind comes from Soviet scholars who suggest that the phrase "international law of peaceful coexistence" is now misleading. The argument is that since the use of force or threat of force is now prohibited by the United Nations Charter and by general international law, the "law of peaceful coexistence" is subsumed under general international law. It has become redundant.[54]

Perhaps proof of this redundancy may be found in the Soviet official reaction to the United States' incursion into Panama in December, 1989.[55] The Soviet spokesman was quick to express

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[53] Law of Feb. 10, 1989, Ved. Verkh. Sov. SSSR, item 79 (1989).

[54] Address by N.B. Krylov, Columbia Law School (Nov. 29, 1989).

[55] *See Foreign Affairs*, 41 Current Dig. Sov. Press, No. 51, at 18, 22-23 (1989)

his view that although the action was a violation of international law, he thought this violation would not interfere with East-West relations. His thought was subsequently borne out, for relations have continued with no more acrimony over this incident than sharp comments by Deputies to the USSR Supreme Soviet when Secretary of State James Baker spoke before its Committee on Foreign Relations in Moscow in February, 1990.[56] There was no move by the Soviet Government to arouse the masses of the world on any dogmatic ground related to "class struggle."

Rein Mullerson, a prominent Soviet international legal scholar,[57] perhaps signalled a few months earlier that dogmatic writing was no longer appropriate.[58] He was prepared to admit that Soviet doctrine in international law still contained too much dogmatism. He quoted approvingly the words of his colleague G.H. Shakhnazarov, former President of the Soviet Political Science Association, to the effect that in formulating Soviet foreign policy, ideological factors "play no greater role than those derived from economic development or political regimes."[59] In short, the differences between economic and social structures, upon which Soviet scholars have so often written when comparing bourgeois and socialist states, are not the primary motives driving the formulators of foreign policy.

(trans. from *Pravda*, Dec. 22, 1989, at 1).

> [T]he United States has committed an act of outright international lawlessness.
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> . . . .
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> The cynicism of the act consists in the claim that this is being done "to defend democracy" in Panama.
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> . . . .
>
> The Soviet Union calls on the United States administration to halt its international actions with respect to sovereign Panama.

[56] Address by Secretary of State James Baker to the Committee on Foreign Relations, Moscow (Feb. 9, 1990). Text of February 9, 1990 press conference as released by the U.S. State Department, from the Novosti Press Center, Moscow, USSR.

[57] Mullerson is currently representing the USSR on the Human Rights Committee formed under the Convention on Human Rights.

[58] *See* Mullerson, *Sources of International Law: New Tendencies in Soviet Thinking*, 83 AM. J. INT'L L. 494, 497 (1989).

[59] *See id.* at 497 (footnote omitted).

NON-IDEOLOGICAL POLICY FORMULATION

The Central Committee of the Communist Party has approved a new program declaring that a rule-of-law state of the whole people has no place for dictatorship of any class.[60] The Committee has also reformed the USSR Constitution to open the way for the development of a multi-party system and the institution of privatization of means of production. These and other recent dramatic events in Soviet domestic affairs place the direction of future moves in foreign policy in question. Will the external policy likewise reflect renunciation of ideologies long associated with the leadership of the USSR?

A case in point to test the thesis that ideology is dead is the discussion between the USSR and the Western powers over the reunification of Germany. Seventy-three years ago the Soviets negotiating with the Imperial German Army at Brest-Litovsk[61] put class warfare at the top of their desiderata. For a time, it seemed that Trotsky was willing to risk further advance of the German Army into Russia under his "No Peace—No War Policy"[62] while he awaited a rising of German workers behind the lines to undercut the Imperial Government in Berlin. Only when the expectation failed to materialize did Lenin call off Trotsky and proceed to negotiate a treaty. Reliance upon international law seems to have emerged in Lenin's thinking only because there was no other way to save his new government. Class struggle remained his priority, but it had to be subordinated to the necessity of saving the state.

In 1990, the Soviet Foreign Minister stands fast on the Four Power Agreement on the Future of Germany[63] to work out (with his partners, Britain, France and the United States) a program to determine mutually acceptable terms regarding the future of Germany. In Soviet eyes, a pillar of the plan must be continued acceptance of the Helsinki Pact[64] guaranteeing post-World War

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[60] *See* GORBACHEV, *supra* note 1, at 245, 293-96.

[61] *See supra* note 15.

[62] *See* TROTSKY, *supra* note 14, at 381, 383.

[63] Quadripartite Agreement On Berlin, Sept. 3, 1971, 24 U.S.T. 283, T.I.A.S. No. 7551, 880 U.N.T.S. 115.

[64] Conference on Security and Co-operation in Europe: Final Act, Aug. 1, 1975 *reprinted in* 14 I.L.M. 1292 (1975).

II frontiers. The German Democratic Republic (GDR) came into being under conditions not alone of security needs, but of ideological systems that were forming in Eastern Europe. The GDR is to be permitted to pass from the ideological camp, as long as security considerations are taken into account.[65] Soviet negotiators are looking for restraints upon a unified Germany to protect their state. However, there is no reference, even in rhetoric, to Ideological aims; to an international duty to aid fellow "socialists"; or to the fraternal relations between communists.

Perhaps there has surfaced a realization that hostility to the USSR over earlier decades was stimulated not by a desire to conquer it, but rather because the USSR's leadership gave the impression to Western statesmen that it hoped to spread socialism throughout the world. Afanasyev, a Soviet historian and member of the Congress of People's Deputies, has suggested that such a realization has come to the fore in Soviet thinking. He posits that "new thinking" is possible because Gorbachev and his colleagues have concluded that the ideological militancy of their predecessors stimulated hostility,[66] and that if this were to be abandoned, the Soviets need no longer fear the West. Thus, a long-term policy of preserving peace could be pursued.

Of course, in international relations, each country's statesmen jockey to gain a diplomatic advantage in one or another situation. This has always been so, even among allies, and presumably it will continue to be so. Soviet negotiators can be expected to press their cause. "New thinking" has not changed this type of conduct, but it does suggest that the "class struggle" motive has been subordinated for an indefinite period, if not forever, to the realization of purely national goals.

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[65] *See* Gumbel, *Soviets, in Policy Reversal, Drop Demand for Neutral German State*, Wall St. J., Feb. 12, 1990, at A11, col. 1.

[66] *See* Womack, *Moscow Needs Reform to Stay a Superpower, Pravda Editor Says*, Reuter Library Report, Jan. 10, 1988.