# Soviet International Legal Theory — Past and Present

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*In this paper Zofia Maclure looks at the historical development of the Soviet theory of international law from the revolutionary period to the present. She concentrates on the major figures in Soviet jurisprudence and their attempts to maintain the Marxist doctrine while at the same time incorporating changes in the Kremlin's policy. It is shown that while the positivist surface of the developing theory is scientific, the underpinning norms fail to escape the scope of natural law.*

International law in Tsarist Russia had been predominantly an imported product. In the eighteenth century, the Academy of Science faithfully followed the instruction of Western Europeans, especially the successive German schools of thought. Even when Russian scholars came to dominate legal studies in their own country in the nineteenth and early twentieth centuries, Russian literature on international law had been heavily dependent on translations of foreign works.[1] The desire of Imperial Russia to be recognized as an equal to the Great Western powers had insured its absorption and acceptance of European international law.

## *Korovin*

The eventual break with the past was not initiated by the February Revolution but came only after the Bolsheviks consolidated their power following the October Revolution. In the intervening period, a booklet entitled *Foreign Policy of New Russia* was published which argued that the Provisional Government should maintain continuity in foreign relations, honoring all the treaties of previous governments.[2] This publication is instructive for several reasons. It was the last treatise of its author, Evgenii Korovin, to be produced in a relative-

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1. Kazimierz Grzybowski, *Soviet Public International Law: Doctrines and Diplomatic Practice*, Durham, N.C., 1970, pp. 1-2.
2. Jan F. Triska and Robert M. Slusser, *The Theory, Law and Policy of Soviet Treaties*, Stanford, 1962, p. 146.

ly free intellectual climate. Shortly after its publication, Korovin found it expedient to alter radically his view and to shape himself into the leading voice in international law to aid the Soviet Union's rejection of tradition. The contrast between this booklet of July 1917 and Korovin's later works illustrates an important feature of the Soviet international legal theory: it developed in a climate in which the scholar's loyalty to the new status quo was an important determinant of his professional success. Therefore, while one cannot be certain that Korovin and other legal theoreticians did not undergo genuine changes of viewpoint, one must certainly doubt the extent to which their writings reveal their convictions.[3]

*Foreign Policy of New Russia* is also instructive in its relevation that at least some influential Russians understood how the revolution would be perceived from outside and what the consequences might be. Besides arguing that repudiation of the commitments of previous Russian governments would be immoral and unlawful, Korovin stressed that to do so would also be foolish for political reasons. Urging the reader to imagine how the international community would view renunciation of indebtedness from South American republics every time there was a revolution, Korovin argued that the failure to honor past commitments could be an invitation to foreign powers to respond by repudiating their commitment to non-intervention in the internal affairs of the revolutionary state.[4] The validity of this viewpoint was to become apparent almost immediately when foreign assistance was provided to the White Army during the civil war.

The October Revolution represented to Russian Marxists the turning of a new page in the historical development of mankind. It was inevitable, therefore, that the science of international law as an imported product would be viewed as out of date and a Marxist approach to legal science would be promoted.

Due to the immediate problems facing post-revolutionary Russia in the field of international relations, the three main concerns of international lawyers were the nature of succession, the structure of the international legal community, and the sources of international law. After writing in 1917 in favor of keeping the obligations of succession, Korovin by 1921 was arguing the opposite case. Disturbed by the inconsistency of diplomats, he criticized them for a "premature readiness" to accept the bourgeois world's approach to international relations exemplified in their "abundant stereotyped references to generally recognized principles of international law" and in the fact that they "even went so far as to quote the arguments in specific articles and paragraphs of agreements concluded by Imperial Russia."[5]

3. Korovin's lack of conviction in his 1921 article is suggested by the fact that it "appears placid, equivocal and impersuasive." *Ibid.*, p. 148.
4. *Ibid.*, pp. 146-147.
5. Evgenii Korovin, "Mezhdunarodnoe pravo perekhodnogo vremenii" (International law of transitional period), *Materialy Narodnogo Komissariata Iustitsii* (Materials of the National

Korovin's view was not shared by Kozhevnikov who argued that the Soviet Union was a continuation of the Russian Empire and, as such, inherited all the rights of the Empire as well as some of its obligations.[6] Resolution of this controversy was determined by which position conferred more flexibility to the new state: Korovin's view prevailed. In practice, the Soviet Union was claiming simultaneously the rights of succession and the right to be free from obligations of succession. This is well illustrated by two contradictory documents produced by Soviet diplomats in the same month — May 1922. At the Economic Conference in Genoa, the Russian delegation presented the view that ". . . revolutions which are a violent rupture with the past carry with them new jurisdical relations in the foreign and domestic affairs of states. Governments and systems that spring from the revolution are not bound to respect the obligations of the fallen governments."[7] Twenty days later, a Protocol was reached between the RSFSR (Russian Socialist Federated Soviet Republic) and Mongolia which stated that ". . . housing and property on the territory of outer Mongolia which were the property of the former Russian Empire which were controlled by its former consuls, by the right of succession are considered property of the RSFSR."[8]

This did not mean that the RSFSR claimed inheritance of all rights and no obligations. The new government did in fact renounce certain Imperial rights to territory, jurisdiction, and financial repayments, although many of these were hardly sacrifices in view of the German occupation. It did mean, however, that the RSFSR wanted maximum freedom to renounce obligations and claim rights. In serving these ends, Soviety legal theory provided a rationalization for this ambiguous position by making a distinction between the form and the type of a state. A change in structure of the institutions of a state was a change in form. A change in form was also a change in type only if a fundamental transformation in the means of production occurred and a new ruling class emerged.[9]

This duality of concept permitted the Soviets to claim rights of succession and denounce obligations whenever it was to their advantage. They could argue that in some spheres only the change in form was relevant, and therefore in these spheres there was continuity between the RSFSR and Imperial Russia, while in other spheres the change in type of state meant that discontinuity prevailed.

The second major theoretical problem was not so readily solved. The defini-

Commissariat of Justice), no. 13, 1921, p. 39, *quoted in* Triska and Slusser, *Soviet Treaties*, p. 149.

6. Grzybowski, *Soviet International Law*, p. 99.
7. H.M.S.O. Cmd 1667, 1922, pp. 42-43.
8. Ministerstvo inostrannykh del (Ministry of foreign affairs), *Sbornik deistvuiushchykh dogovorov, soglashenii i konventsii zakliuchonnykh SSSR s inostrannymi gosudarstvami*, (Collection of treaties, agreements and conventions in force concluded by the USSR with other countries), vols. 1-2, no. 67, *quoted in* Grzybowski, *Soviet International Law*, p. 94.
9. Grzybowski, *Soviet International Law*, pp. 98-99.

tion of a structure in the international legal community posed difficult questions for people who believed that the RSFSR was a fundamentally different kind of state and that the world was rapidly entering a period of widespread revolution leading to a transition from capitalism to socialism. There were two aspects to this problem: first, specification of types of subjects of international law; and second, description of the systems into which these subjects were organized.

It was only natural for Korovin to use a pluralistic approach in addressing the subject. Since the tendency of Westerners to conceive of the international legal community as a unit under one system of international law is to some extent produced by anticipation of growing integration, the tendency of Korovin to view the system differently could be expected from the post-revolutionary anticipation of disruption of the international order. Korovin took a very loose stand on the issue of what constitutes a person, or subject, of international law by including in his definition not only established states, international organizations, and nations yet to establish statehood, but also such groups as wandering tribes and trading companies.[10] His definition seems to have been a realistic effort to recognize the tremendous contrasts between groups that interact across national boundaries.

Such groups were not, therefore, organized under a uniform system of international law. This conclusion was important because a new socialist state did not wish to appear in conformity with a capitalist institution. There had to be a new system in the international community created by the emergence of the Soviet Union. Korovin, therefore, created the concept of a separate system of Soviet-capitalist international law. He also subdivided existing capitalist international law into three systems: European, American, and Imperial-colonial. This four-circle conceptualization was based on his view of the community of interests and solidarity between ruling classes in each circle.[11]

Strong criticism of Korovin came from Sabanin and Hrabar, both of the traditionalist school. Sabanin held the view that international law was founded on its recognition by a community of states and could not be produced by a single state; therefore a new socialist state could not create a new system but could only improve the existing system.[12] Hrabar argued from a practical position that there were not enough distinctive generalizations that could be made about Soviet practice during the transition period for a separate legal system to be produced.[13]

10. Evgenii Korovin, *Sovremennoe mezhdunarodnoe publichnoe pravo,* (Contemporary public international law), 1926, *cited in* Grzybowski, *Soviet International Law,* p. 5.
11. James Hildebrand, *Soviet International Law,* Oberlin, Ohio, 1968, p. 24.
12. Sabanin, "Pervyi sovetskii kurs mezhdunarodnogo prava" (First Soviet course on international law), *Mezhdunarodnaia zhizn'* (International life), no. 2, 1926, p. 106, *cited in* Grzybowski, *Soviet International Law,* p. 6.
13. Hrabar, "Das heutige Völkerrecht vom Standpunkt eines Sowjetjuristen" (Contemporary in-

This was the beginning of a decades-long controversy. Korovin's position led to his fall from grace in the 1930s. However, as long as the New Economic Policy required collaboration with capitalists, he enjoyed considerable authority.

In the early years there was no single Soviet interpretation of international law. Korovin's view was favored by the Party since he based it on Marxist doctrine and on the legitimacy of compromise in the transitional period while the RSFSR was still surrounded by capitalism. Korovin rationalized the RSFSR's great dependence on treaties in its conduct of foreign relations[14] more than other theoreticians of the period.

Since the RSFSR was a newcomer to the international scene and had renounced complete continuity with its predecessor, the main basis of its foreign relations could not have been the customary practice of European nations. The People's Commissariat of Foreign Affairs therefore adopted the strategy of concluding numerous bilateral treaties. This strategy freed the RSFSR from the constraints of tradition and the need for consistency.[15]

In this way the third question of international law engaging contemporary legal scholars, namely the source of international law, was answered by stressing the importance of treaties at the expense of custom. This answer, like those to the questions on the nature of the international legal community, was not final. The questions would inevitably be raised again and again until practice had finally determined which theory would prevail. Meanwhile, the controversy around the first question, concerning the rights and obligations of succession, faded away as the new web of commitments and claims was progressively constructed through bilateral treaties.

The first phase in the development of Soviet theory of international law came to an end slowly as the possibility of spreading revolution became doubtful. The transition had been pictured as a worldwide phenomenon soon to be observed in full. By the mid-thirties a very different outlook prevailed: the world was not following the U.S.S.R. into socialism. The U.S.S.R. would have to advance by itself. In addition, there was the realization that progress toward socialism, although historically inevitable, was far from easy.

Stalin played a considerable role in this change of attitude. In the late 1920s,

ternational law from the point of view of a Soviet lawyer), *Zeitschrift für Völkerrecht* (Journal of International Law), 1928, p. 191, referred to by Grzybowski, *Soviet International Law*, p. 6.

14. "Korovin, a good communist since the October Revolution, made a valiant attempt to put Soviet scholarship on a common basis with the practical needs of the People's Commissariat of Foreign Affairs. . . . In the atmosphere of little or no mutual confidence, the Soviet Union could not afford to leave its protective shell for long: international treaties were the most suitable vehicle for such limited foreign relations. Korovin was ready and willing to subscribe to this practical necessity. . . ." Triska and Slusser, *Soviet Treaties*, pp. 12-13.
15. *Ibid.*, p. 12.

he launched a program of rapid industrialization under the banner of building "socialism in one country." This plan involved growth of the state, regimentation of public discussion, and increased hierarchical organization of society. While the twenties had been a time when "men could and did make a name for themselves without having an official position of consequence" and when "academic life was largely controlled by professors who had made their reputations in pre-revolutionary times,"[16] the thirties were years of cultural counter-revolution and neo-nationalism in which there occurred a "degeneration of public debate to the level of simplified dogmatic statements of an infallible and undiscussable Party line."[17]

The Party line in the 1930s fundamentally supported the aggrandizement of the state. Public discussion was full of praise for the glorious construction of socialism. It followed that any ideas that could not be clearly linked with praise for the new mission of the state were criticized. The "discussion of errors" in the field of legal theory came to a head at a conference at which, after a long debate, a resolution was passed condemning not only the traditionalists (Hrabar, Sabanin, and others) for their failure to understand the role of law in a socialist society, but also the Marxists led by Korovin and Pashukanis, for their eclecticism, legal nihilism, and petty bourgeois radicalism.[18]

Korovin had little with which to defend himself in this setting. He had made the mistake of underemphasizing the state, grouping it with wandering tribes and trading companies as subjects of international law. He had created a picture of the international community in which the Soviet Union belonged to just one of four circles. He had described international law as a law of compromise between ruling classes. All of this worked against enhancement of the state's image. There was little for Korovin to do except admit his errors[19] and give up the leadership to whomever was prepared to present with vigor a contrary interpretation.

### *Pashukanis*

Interestingly, the person who took on this task was Pashukanis, who had held a position close to Korovin's during the twenties, and had been condemned for eclecticism and legal nihilism himself. After admitting his own errors, he established himself as the leading voice in international legal theory by becoming Korovin's strongest critic. He replaced the inglorious concept of compromise

16. Alec Nove, *Stalinism and After,* London, 1975, p. 49.
17. *Ibid.,* p. 63.
18. Grzybowski, *Soviet International Law,* p. 7.
19. Korovin confessed his "many mistakes" in a letter to the editor of a journal, *Sovetskoe Gosudarstvo* (The Soviet State), May 9, 1935, *cited in* Hildebrand, *Soviet International Law,* p. 30.

with the heroic and Marxist concept of struggle. There were no circles of common ideology or sharing of values in the international community on which international law was based.[20] Instead, international law was simply a weapon, "a means of struggle not only between competing capitalist states but between different and opposing economic and social systems."[21] Viewing law as a weapon, Pashukanis saw no need to deny that it was a bourgeois creation, because there was no need for the Soviet Union to accept its substance, only the need to employ it expediently. Pashukanis also criticized Korovin on the source of international law. The views that "the Soviet government should recognize only treaties [as a source of] international law and should reject custom are absolutely wrong,"[22] according to Pashukanis. He backed up his argument by making Korovin's view seem ungenerous to the state:

> an attempt to impose upon the Soviet government a doctrine it has nowhere expressed is dictated by the patent desire to deprive the Soviet government of those rights which require no treaty formulation and derive from the fact that normal, diplomatic relations exist.[23]

Pashukanis' greatest contribution to the aggrandizement of the state was his advocacy of the principle *rebus sic stantibus* by which he viewed the Soviet Union as having the right to nullify a treaty as soon as it was in its interest to do so. The Soviet Union deserved this superior freedom to other nations, Pashukanis stated, because it was leading the world in the advance of progress.[24]

While Pashukanis temporarily satisfied the Party with his extremely tendentious approach to international law, his contribution to theory was largely negative. Pashukanis' negativism extended from the substance of existing theory to its purpose. He saw little use for international legal doctrine[25] and viewed discussion of the nature of international law as meaningless "scholasticism."[26] He urged Soviet legal science to address itself instead to the inherent limitations of international law so that it could be more effectively employed as a weapon. He also urged scholars "to make it their task to learn and publicize the practice of the Soviet state."[27]

Pashukanis' *Essays* were published in 1935. Three years later he was labelled

20. Hildebrand, *Soviet International Law*, p. 27.
21. Evgenii Pashukanis, *Ocherki po mezhdunarodnomu pravu* (Essays on international law), Moscow, 1935, p. 16, *cited in* P. Corbett, *Law in Diplomacy*, Princeton, 1959, p. 96.
22. Pashukanis, *Ocherki*, ch. 2, *quoted in* Triska and Slusser, *Soviet Treaties*, p. 13.
23. *Ibid.*, p. 14.
24. Grzybowski, *Soviet International Law*, p. 8.
25. *Ibid.*, p. 9.
26. John N. Hazard, "Pashukanis is No Traitor," *American Journal of International Law* (hereinafter cited as *AJIL*), vol. 51, 1957, p. 387.
27. Pashukanis, *Ocherki*, p. 16, *cited in* Corbett, *Law in Diplomacy*, p. 96.

"an enemy of the people" and purged. Part of the reason for this lay in the Party's changed priorities in the mid-thirties. In 1936, Stalin proclaimed the achievement of socialism. This meant that capitalism finally had been suppressed and internal class struggle ended. Pashukanis had said that law was exclusively an instrument of class struggle which meant that it should disappear (or at least be transformed) when socialism was achieved. But Stalin had no intention of changing the legal system for it served him rather well. According to the new Party line, justification for the continuation of bourgeois institutions in the fully socialist state had to be found.[28]

At this time, Stalin was also awakening to the Fascist threat. In 1935 the Party's attitude toward anti-Fascism changed suddenly from disapproval to approval. This was followed by the adoption of the "collective security" policy in which the U.S.S.R. sought alliance with Western opponents of Fascism. Pashukanis' assertion that the international relations between the Soviet Union and the capitalists were characterized only by struggle was therefore not altogether satisfactory.

### *Vyshinskii*

The man who was finally responsible for the purge of Pashukanis was Andrei Vyshinskii, the chief author of Stalin's constitution and the new Prosecutor-General of the Soviet Union.[29] The substance of Vyshinskii's attack was sometimes illogical and hypocritical. Pashukanis was accused of recognizing the binding force of bourgeois international law on the Soviet Union, although he had in fact asserted the opposite.[30] He was criticized for viewing international law as a law of compromise,[31] although this was the old position he had recanted and strongly criticized in his *Essays*. He was condemned for being a legal nihilist because he viewed international law as merely a tool to serve the political interest of the state,[32] but Vyshinskii later reproduced this same thesis.[33] He was also derided for not recognizing the existence of socialist international law, but Vyshinskii never substantiated the view except in the vaguest terms.[34]

Thus, one must doubt that Pashukanis' downfall during the Great Purge of 1936-38 was only a result of his theories.[35] His emphasis on international strug-

28. Hildebrand, *Soviet International Law*, p. 33.
29. The same "unspeakable Vyshinsky, prosecutor at the show trials, who hurled abuse at and mocked his helpless victims, and who must have been well aware that the scenario he was enacting was a pack of lies." Nove, *Stalinism*, p. 67.
30. Grzybowski, *Soviet International Law*, p. 9.
31. Triska and Slusser, *Soviet Treaties*, p. 16.
32. Grzybowski, *Soviet International Law*, p. 9.
33. Corbett, *Law in Diplomacy*, pp. 99-100.
34. Hildebrand, *Soviet International Law*, p. 37.
35. "The purge of Pashukanis and his views left the Soviet theory of sources of international

gle, his inflation of the importance of the state and his pragmatic view of international law as a tool continued to be elements of the orthodox approach. The main difference between Pashukanis' position and that which followed him was an incorporation of the idea of cooperation into the concept of struggle.

The beginning of the strange union of struggle and cooperation is thought to be a book review by none other than Korovin. Since he was still in disgrace, he quoted a phrase attributed to Molotov which described international relations between capitalist states as "cooperation and competition."[36] By 1938 cooperation was an accepted theme. The "Thesis on International Law" published anonymously in *Sovetskoe Gosudarstvo* under Vyshinskii's editorship, asserted that the main principle on which the Soviet legal theory should be constructed was adherence to the "Leninist-Stalinist theory of foreign policy," which involved the continued use of bourgeois institutions of international law,[37] including temporary agreements of cooperation with capitalist nations as justified in view of the capitalist encirclement of the U.S.S.R.

The "Thesis" marked the beginning of Vyshinskii's dominance of Soviet international law for nearly two decades:

> In the development of Soviet international law, as well as domestic law, no one played a more significant part than the ex-Menshevik lawyer Andrei Vyshinskii. His ready grasp of the purposes and methods of the Communist dictatorship and his willingness to put his talents at the disposal of the Party made him a most valuable Soviet spokesman, despite his spotty political past. . . . Vyshinskii was primarily a political figure rather than a scholar or theorist, and he was usually too concerned with the urgent tasks of the moment to formulate theoretical conceptions. Nevertheless his opinions . . . served as obligatory guides to lesser men — scholars, jurists and professors — who had the task of working out the theoretical implications of Vyshinskii's specific actions and propositions.[38]

Vyshinskii's political approach, which kept him aloof from detailed specification of his ideas, no doubt contributed to his endurance through the period

order in a state of some confusion. Since it was difficult to specify in just what ways his theories had been defective, it was equally difficult to devleop new and completely different theories, theories which would be acceptable to the Communist Party." Triska and Slusser, *Soviet Treaties,* p. 15.

36. Eugene A. Korovin, "Review of *The Soviet Union and International Law,*" *Harvard Law Review,* vol. 49, 1936, p. 1393.
37. "Tezisy po mezhdunarodnomu pravu" (Thesis on international law), *Sovetskoe Gosudarstvo* (The Soviet State), no. 5, 1938, pp. 119-122, *cited in* Triska and Slusser, *Soviet Treaties,* p. 16.
38. Triska and Slusser, *Soviet Treaties,* p. 20.

of continually changing foreign policy.[39] The most dramatic change in foreign policy was the Soviet-German Pact and the partition of Czechoslovakia and Poland. Besides requiring reinterpretation of the meaning of "aggression,"[40] the change in policy required the identification of distinctions between the Soviet approach to peace and "bourgeois pacificism," and the development of a Soviet concept of *bellum iustum*. Kozhevnikov wrote at length explaining how the Soviet Union's pursuit of peace was advanced by its acquisition of secure frontiers and territories that strengthened the communist order, because ever since its creation the Soviet Union had been in danger of imperialist aggression. Thus, the Molotov-Ribbentrop Pact was interpreted as an act of peace because it secured the Soviet Union against the aggressive Anglo-French Bloc. By contrast, the Kellogg-Briand Pact was considered a propaganda device of "bourgeois pacificism," an aggressive act because it aimed to maintain the status quo of capitalist aggression.[41]

Another Soviet jurist, Rapoport, introduced the idea of just wars and unjust wars to Soviet legal theory. Just wars included wars of national liberation and revolution against capitalism, but the "most just" wars of all were those aimed at strengthening the security of the socialist state.[42] Thus, whether an act was aggressive or peace-promoting, and whether a war was just or unjust did not depend on the manner and the situations in which they occurred but on whether their goals or benefits favored the peace-loving socialists or the aggressive imperialists.

The second dramatic change in policy followed the German attack on the U.S.S.R. The subsequent Grand Alliance permitted further discussion of cooperation with capitalists. Several authoritative works were published in 1947 following Vyshinskii's line that the Soviet Union had transformed international law. However, they were against codification of it; in their opinion, it would help to perpetuate the capitalist dominance.[43] Buttressing the Soviet position with respect to its wartime territorial acquisitions seems to have led to a new emphasis on the importance of sovereignty, self-determination, and non-intervention. In 1948 Vyshinskii wrote an article condemning the Western desire to set up a supra-governmental authority to which all states would give up some of

39. He did not face the embarrassment of Kozhevnikov who praised the Soviet Union's non-aggression pacts with the Baltic states in an article published one month before the Soviet Union violated them. *Ibid.*, p. 17.
40. Molotov, in his speech to the Supreme Soviet on October 31, 1939, clarified the new meaning of the terms "aggression" and "aggressor" by explaining that since the collapse of Poland in September 1939 it was France and Britain, and not Germany who were aggressors, since Germany at least expressed its will to negotiate with the others. *Sovetskoe Gosudarstvo i Pravo,* (hereinafter cited as *SGP*) (Soviet State and Law), no. 5, 1939, pp. 3-5.
41. Kozhevnikov, note 17 in *SGP,* no. 2, 1940, pp. 110-111.
42. M. Rapoport, "Sushnost' sovremennogo mezhdunarodnogo prava" (The essence of contemporary international law), *SGP* nos. 5-6, 1940, pp. 137-153.
43. Grzybowski, *Soviet International Law,* p. 13.

their sovereignty. Instead, he advocated Stalin's "principles of socialist democracy" which emphasized the independence of nations.[44]

With the creation of the Cominform and the integration of Eastern Europe, it appears that the Soviet leadership regained sufficient confidence in the strength of the U.S.S.R.'s position to favor renewal of hostilities and the collapse of the Grand Alliance. The demotion of a number of scholars occurred in 1949, and international legal theory devoted itself to stressing the achievements of the Soviet Union, analyzing the problems of just wars and state sovereignty in terms of class warfare, and defending the independence of the socialist system against Western cosmopolitanism.[45]

With Stalin's death in 1953 the third period of Soviet theory of international law drew to an end. Destalinization followed, reaching its peak in 1961. The new period of international legal theory characteristically included fierce condemnation of the ideological leaders of the previous period. In 1962 Korovin published an article entitled "Elimination of the Consequences of the Cult of the Individual in the Science of International Law" in which he charged that "the greatest number of incorrect and unscientific theses in the field of international law belongs to the pen of Vyshinsky."[46] The article criticized Vyshinskii for:

> his definition of international law, his view of the relationship between international and municipal law, his negation of international law, his evaluation of the institution of neutrality, and his lack of understanding of the new type of international relations between socialist countries.[47]

Meanwhile Pashukanis, whom Vyshinskii had denounced so strongly, had been rehabilitated.[48]

### *Tunkin*

The successor to Vyshinskii has been Grigori Tunkin who was "much-favored while Vyshinskii was still living, but at that time [was] not greatly in the public eye because the views he expressed conformed to Vyshinskii's."[49] Tunkin seems to have been the first international lawyer to have absorbed and

44. Vyshinskii, "Mezhunarodnoe pravo i mezhdunarodnaia organizatsiia" (International law and organization), *SGP* no. 1, 1948, pp. 1-24.
45. Grzybowski, *Soviet International Law,* pp. 13-14.
46. E. Korovin, "Likviditovat' posledstviia kul'ta lichnosti v nauke mezhdunarodnogo prava," (The elimination of the consequences of the cult of personality in the science of international law), *Sotsialisticheskaia zakonnost'* (Socialist legality), no. 8, 1962, p. 47, *quoted in* Bernard Ramundo, *The Socialist Theory of International Law,* Washington, D.C., 1964, p. 12.
47. Ramundo, *Socialist Theory,* p. 12.
48. Triska and Slusser, *Soviet Treaties,* p. 16.
49. Hildebrand, *Soviet International Law,* p. 40, n.143.

developed the slogan of peaceful coexistence, which was declared at the 20th Congress of the Communist Party in February 1956. In the same year, an article by Tunkin was published under the title "Peaceful Coexistence and the International Law."[50] Peaceful coexistence soon became Tunkin's central thesis and as the slogan became the ideological theme of Soviet foreign policy for two decades, it assured Tunkin's position as leading spokesman in the fourth period of the historical development of Soviet international legal theory.

As it was originally put forward, Tunkin's theory emphasized that only one system of international law can exist. Moreover, since the law was based on international agreements, there could not be socialist international law. Thus, in his original scheme, peaceful coexistence was the formal context of all international law, even among cooperating socialist countries inspired by socialist internationalism.[51]

At the time when Tunkin published this article, Korovin was still active and trying to revive the concept of socialist international law which had previously led him to be purged. He finally achieved success when the Soviet intervention in Hungary in 1956 had to be rationalized.[52] The existence of socialist international law became official again and Tunkin was forced to modify his theory. He did this by explaining that "proletarian internationalism," as exemplified by the 1957 Declaration of Twelve Communist Parties, which ended disagreement over the Hungarian crisis, had transformed relations among socialist countries into something qualitatively different and historically more advanced than peaceful coexistence.[53]

Another major revision was still ahead. At the 1961 CPSU Congress, the principle of peaceful coexistence was elevated to the level of highest importance, but in a review of the conference by Zadorozhnyi and Kozhevnikov, the slogan was given a different meaning. Peaceful coexistence did not mean class peace; it was a form of class warfare, armed warfare being too dangerous in a world of nuclear weapons.[54] Once again other theoreticians, including Tunkin, were criticized for viewing international law as a law of compromise. Tunkin survived this attack by joining it. He adopted the interpretation of peaceful co-

50. Grigorii Tunkin, "Mirnoe sosushchestvovanie i mezhdunarodnoe pravo" (Peaceful coexistence and international law), *SGP,* no. 7 (1956).
51. Grzybowski, *Soviet International Law,* p. 17.
52. *Ibid.,* p. 18.
53. Grigorii Tunkin, "Sorok let sosushchestvovania i mezhdunarodnoe pravo" (Forty years of coexistence and international law), *Sovetskii Ezhegodnik Mezhdunarodnogo Prava* (Soviet Yearbook of International Law), Moscow, (1958), p. 36.
54. Zadorozhnyi and Kozhevnikov, "S"ezd KPSS i nekotorye osnovnye voprosy sovetskoi teorii mezhdunarodnogo prava" (The CPSU Congress and some fundamental problems of Soviet theory of international law), Institut mezhdunarodnykh otnoshenii, *Ucheye Zapiski Seriia Iuridicheskaia* (The Institute of International Relations, Scientific notes on law), vol. 10, 1962, p. 3, *cited in* Grzybowski, *Soviet International Law,* p. 20.

existence as peaceful contest and joined in the denunciation of Vyshinskii's ideas.

In 1962, Tunkin established his leadership among Soviet jurists by publishing a textbook on the theory of international law which was more comprehensive than any previous text.[55] Later he modified it somewhat as a result of Khrushchev's succession by Brezhnev and the invasion of Czechoslovakia in 1968. The revision published a few years later contained greater emphasis on disarmament and on human rights, as well as modifications of the doctrine of socialist internationalism.[56] Under Brezhnev's conservative rule, the past decade has been a period of considerable stability in Soviet foreign policy and consequently of little change in Soviet theory of international law. Tunkin's text is therefore representative of the present position of Soviet jurists on international legal theory.

### *Importance of the Historical Context*

Looking back at the history of the development of Soviety theory, one is impressed by the oscillations between positions and the recurrence of the same problems again and again. The most oscillation seems to have occurred on the subject of whether or not international law or a portion of it was "socialist." In the 1920s Korovin had put forward the view that Soviet-capitalist international law was one of four circles. In the early 1930s Pashukanis denounced the existence of anything but bourgeois international law, which was to be used as a weapon. In 1938 Vyskinskii denounced Pashukanis for failing to recognize socialist international law, but by 1947 Krylov in the Academy of Sciences' *Mezhdunarodnoe pravo* was writing that the concept of socialist international law had no future.[57] Stalin's *On Marxism and Linguistics* (1951) renewed the debate bringing Kozhevnikov into it as a proponent of a separate system of socialist international law in Eastern Europe.[58] Korovin joined in support of Kozhevnikov in 1951. Together, in 1953, they were demoted after the 19th Party Congress' general attack on legal science, and the rejection of socialist international law continued through 1955. Finally Korovin, with the help of the Hungarian crisis, succeeded in establishing the concept which remains a part of current dogma.

55. Grigorii Tunkin, *Voprosy teorii mezdunarodnogo prava,* (Problems of the theory of international law), Gosiurizdat, Moscow, 1962.
56. Grigorii Tunkin, *Theory of International Law,* Cambridge, 1974.
57. V. N. Durdenevskii and S.B. Krylov, *Mezhdunarodnoe pravo* (International Law), 1947, *cited in* Grzybowski, *Soviet International Law,* p. 15.
58. F.I. Kozhevnikov, "Nekotorye voprosy mezhdunarodnogo prava v svetle truda I.V. Stalina: Marksism i voprosy iazikoznania" (Selected problems of international law in the light of J.V. Stalin's "Marxism and Linguistics"), *SGP,* no. 6, 1951, p. 25.

A similar kind of semantic oscillation centered on the nature of the Soviet relationship with the West under international law. The notion of "compromise" was rejected in favor of the notion of "struggle" which was later rejected in favor of "struggle and cooperation." "Cooperation" was then deemphasized in favor of "struggle." Then came "peaceful coexistence" which was criticized for implying "compromise" and subsequently it was reinterpreted to mean "struggle and cooperation."

To Western observers these controversies may seem petty, but Grzybowski explains why they are so important to Soviet jurists:

> Victory in a theoretical conflict opens the road to honors, emoluments, and high governmental positions, which are in limited supply. Thus a leading position on the editorial board of an important periodical, the directorship of the Institute of Law in the Academy of Sciences of the U.S.S.R., the leadership of a scientific collective at a university, or an editorial position in a collective project for the preparation of an important textbook — these all mean important additions to professional salaries, future membership in the Academy of Sciences, and assignments in interesting capitals abroad.[59]

However, this is not the only importance of these controversies. For Western observers they provide an indication of changes in the attitudes of policy makers. It is true that policy itself is the best indicator of attitude, but ideological rationalizations of existing practice are important supplements for gaining an insight into the attitudes of Soviet leaders and predicting their future behavior.

An understanding of the present Soviet view of international law clearly would be incomplete without information on its historical development as outlined above. The history of Soviet international legal science demonstrates the important relationship between the scholastic development of theory and existing state policies, as well as illustrating certain features of a legal theoretician's position in Soviet society. Without this background knowledge, the tendency would be to read the substance of Soviet theory as if it had been written in a Western context. Such a tendency would be quite misleading.

Although extremely important, the history of its development nevertheless is not the only aspect of Soviet international legal theory which distinguishes it from Western approaches. An understanding of the substance of Soviet theory would also be incomplete without prior appreciation of certain characteristics of Soviet theory taken as a whole. Therefore, in this discussion of international legal theory in the U.S.S.R. today, represented mainly by the work of Tunkin,

59. Grzybowski, *Soviet International Law*, p. 25.

an overview of the Soviet approach will be constructed before presentation of the principal content of the theory.

### *Survey of Present Day Theory*

Probably the most fundamental characteristic of the Soviet approach to legal theory distinguishing it from that of Western jurists, is the presumption that there is one truth, one correct way of viewing the world. This seems to be a feature of most fields of Soviet scholarship. It reflects the persistence of attitudes which were common in the West in the nineteenth century, but which have long since been succeeded by more sophisticated ones. In the nineteenth century, people were increasingly impressed with the achievements of science and sought an explanation for scientists' success in advancing knowledge. It appeared to many that the scientific method consisted of discovery of laws by objective observation. This is the spirit in which Marx approached sociology. In the end it led him to believe that he had discovered the laws governing the forces which advance human history.

In the twentieth century, the average Westerner, not just the intellectual, has come to appreciate that objectivity is easier to aspire to than it is to achieve. In academic circles, a great appreciation of the effect of subjectivity on knowledge has developed, leading to a realization that absolute truth is inaccessible and that hypotheses greatly influence perception and selection of observations.[60] Meanwhile in the U.S.S.R., Marxist dogma, geographic, cultural and political isolation, and Stalinist suppression of intellectual freedom have all contributed to the preservation of the nineteenth century confidence in objectivity without twentieth-century appreciation of the potential problems of subjectivity.

This attitude has an impact on legal science in several important ways. It means that skepticism, consideration of alternative views, and speculation, have little or no place in Soviet writings which put considerable restrictions on the range of subject matter that can be discussed in publications. It means that a Soviet scholar cannot readily see the influence of subjectivity in Marx's views and in his own interpretation of Marx's views. This also places restrictions on his thought processes because of Marx's strong convictions in simplistic notions of history and social relations, and lack of confidence in any idea that seems inconsistent with those notions. These restrictions have determined some of the fundamental characteristics of the Soviet approach to the theory of international law.

One way in which Soviet legal theory has restricted itself is by its abstractness. An example of an extreme degree of abstractness among Western jurists is

60. *Cf.* Karl Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge*, London, 1963, *passim.*

Kelsen's approach, which strives to establish a "pure" theory of law, uncontaminated by practical examples.[61] De Visscher criticizes him for trying to apply generalities to a field in which immediate circumstances play such an important role.[62] Although Soviet international legal theory is certainly not at Kelsen's level of abstractness, it cannot escape de Visscher's criticism. Soviet theory stays a safe distance from practical examples which would require authors to admit uncertainty, confusion, or inconsistency. Soviet authors have discovered what Marx found himself: it is much easier to link abstract ideas to Marxist dogma than it is to accommodate practical experience within it.

A Western text on international legal theory would be expected to point out situations in which theory was incomplete, inadequate, or contradictory. For example, it is standard to recognize that the definition of statehood presents a problem in international law.[63] Soviet writers, however, have no problem with it. Tunkin defines the state simply as a "social construction" and "a class organization." Despite asserting that "the existence of sovereign States is of capital importance for present-day international law,"[64] he presents only a historical-materialistic explanation for their origins rather than addressing the difficult issue of defining criteria for recognition of state sovereignty when it is disputed. The problem of considering a liberation movement as a subject of international law when there are several competing movements in the same territory is not discussed in the Soviet press or legal works. Of course, neither is the reality of nationalist movements for liberation from Russian domination such as those in the Ukraine, Lithuania and Latvia, to name a few. Nations and peoples are always treated simplistically as indivisible units. The Soviet position on the question of whether individuals are subjects of international law is unambiguous: it rejects the idea that individuals can be subjects.[65] Yet it accepts the Nuremburg trials of war criminals as examples of the application of modern international law.[66]

61. Hans Kelsen, *Pure Theory of Law,* Berkeley, 1967.
62. Charles de Visscher, *Theory and Reality in Public International Law,* Princeton, 1968, pp. 66-68.
63. *Cf.* Werner Levi, *Contemporary International Law: A Concise Introduction,* Boulder, Colorado, 1979, p. 65.
64. Grigorii Tunkin, "International Law in the International System," *Hague Recueil,* vol. 4, 1975, pp. 30-31.
65. "The theories of subjectivity of individuals in international law are theoretically unfounded and politically dangerous. These theories are objectively directed against state sovereignty and are used by aggressive circles in order to justify interference in internal matters of other states." Tunkin, *Osnovy Sovremennogo Mezhdunarodnogo Prava* (The foundation of contemporary international law), Moscow, 1956, p. 20. In the same vein, Tunkin observed recently that: "This intrusion of the regulatory influence of international law into the domain of human rights does not mean that human rights are directly regulated by international law nor that they have ceased basically to be the domestic affair of a state." Tunkin, *Theory of International Law,* p. 82.
66. Tunkin, *Theory of International Law,* p. 160.

The Soviets' apparent inability to recognize subjectivity in their own thinking and their confidence in their objectivity lead them to an inconsistency. They reject the naturalist school of legal theory without recognizing that, in their unique mixture of the positivist, sociological, and policy-oriented schools of legal theory, there is still a strong sense that justice has a role in determining law. This is a viewpoint characteristic of the naturalist school. Before elaborating on this inconsistency, it is necessary to describe the ingredients of their unique mixture of schools of thought.

Tunkin's position is predominantly that of a positivist in his emphasis on treaties as the primary source of international law. Customs and general principles are sources of law only if they are agreed upon. In his words,

> *opinio juris* signifies that a state regards a particular customary rule as a norm of international law. . . . This is an expression of the will of a state, in its way a proposal to other states. When other states also express their will in the same direction, a tacit agreement is formed.[67]

But he stresses that agreement on norms by a significant number of states does not make the norms binding on all states.[68] Further, his positivism is most clear in his treatment of the principle of *ius cogens:* "[the] principles of *ius cogens* are created in the same manner as other norms of general international law, that is, by treaty or custom,"[69] and "they are completely distinct from the principles of *ordre public* propagated by natural law doctrine which are not dependent upon the wills of states."[70] Interestingly, despite his equating the principles of *ius cogens* with custom, the conditions under which they become binding are different. While a tacit agreement on custom is formed only as a result of an expression of will (*opinio juris*), agreement on the prevailing principles of *ius cogens* exists "if a new state enters *without reservations* into official relations with other states."[71] Tunkin also has a positivist's view of general principles of law as "legal notions, legal postulates, rules of logic and legal technique applied . . . in the process of interpretation and application of rules of law,"[72] which he believes become applicable in international law "through their recognition by states . . . i.e., through international treaty or custom."[73]

Despite Tunkin's positivism, his incorporation of some orthodox Soviet ideology into his scheme leads to a number of similarities with the sociological

67. *Ibid.*, p. 133.
68. *Ibid.*, p. 131.
69. Tunkin, "International Law," p. 92.
70. Tunkin, *Theory of International Law,* p. 158.
71. *Ibid.*, p. 159.
72. Tunkin, "International Law," p. 105.
73. *Ibid.*

and policy-oriented schools of thought. The sociological school, of which Duguit is a representative, approaches international law as a social phenomenon to be studied objectively as a sociologist would conduct his research. In the Soviet version of the sociological school, international law is seen as a social phenomenon but it is not studied objectively by western standards.[74] Nevertheless, there remains a parallel between the Soviet desire to account for the authority of rulers in terms of class interest and Duguit's attempt to base the ultimate source of authority of law on popular consent (social solidarity).[75]

Thus, international law is not viewed by Soviet jurists and theorists simply as the totality of agreements among states as a traditional positivist would view it. It is viewed in addition as a manifestation of the "general laws of societal development."[76] In this fashion, Soviet authors have distinguished two categories of sources of international law: formal sources (treaties, customs, binding decisions of international organizations) and substantive sources (struggle, coexistence, etc.).[77] This distinction is not specifically emphasized in Tunkin's works but is nevertheless apparent. He tends to separate his discussion of international law as a product of agreement between the wills of states (which is a matter of form) from his discussion of the wills of states as products of the laws of societal development (which is a matter of substance). International law is viewed as a superstructure; economics is the infrastructure, and the will of states acts as intermediary. Economic structures influence (but do not create) international law,[78] while the recent internationalization of economics accounts for the growth of international law.[79]

The parallel with the policy-oriented school, which advocates the use of law for reaching specific social ends,[80] lies in the importance attached by Soviet jurists and theorists to objectives of law. Tunkin writes of this in general terms: "the difference in the class nature of the wills [of states] involves inevitably a difference in the ultimate aims of the states concerned."[81] Other authors have been more specific:

> The Soviet state viewed international treaties as a serious means in the struggle for peace, for the victory of communism [sic]. On the other hand, the imperialist states exploit international treaties to

74. Objectivity in Soviet understanding is an adherence to the principles of historical materialism as they were formulated by Marx and reformulated by Lenin.
75. *Cf.* de Visscher, *Theory and Reality*, pp. 65-66.
76. Tunkin, "International Law," p. 9.
77. Triska and Slusser, *Soviet Treaties*, p. 30.
78. Tunkin, "International Law," p. 19.
79. *Ibid.*, p. 29.
80. Levi, *Contemporary International Law*, p. 19.
81. Tunkin, "International Law," p. 20.

> mask their aggressive goals and legally secure the dependence of small states.[82]

Thus, as mentioned earlier, the Kellogg-Briand Pact was viewed as "bourgeois pacifism" while the Soviet-German Pact was seen as a general pursuit of peace. While this attitude to the Kellogg-Briand Pact no longer prevails,[83] Soviet jurists' emphasis on objectives may be seen today in other areas such as in discussion of Western aims in supporting human rights at the Helsinki Conference.

The Soviet approach was most similar to the policy-oriented school during the early 1930s when Pashukanis' pragmatic theories prevailed. The Soviets still maintain this approach in many respects. Tunkin clearly accepts the view that international law is a tool of policy. While he writes "McDougal's concept . . . that international law is fused with policy, is scientifically unfounded,"[84] he agrees that:

> were McDougal to have limited himself to the assertion that states use international law as an objectively existing system of legal norms in order to achieve the goals of their policy, then there would be no dispute.[85]

The naturalist element in Soviet theory is more subtle. Soviet jurists claim that there is no natural law arising from universal moral principles or common ideas of justice. They view the naturalist standpoint as unscientific: "In essence the natural law theory inevitably leads to religion in one form or another."[86] This is where the Soviet inability to see the effect of subjectivity in their own work is most apparent. Despite their talk about the objectivity of historical materialism, Marxists have a very strong sense of the existence of morality outside law. Their belief in the injustice of private ownership of the means of production and in the ultimate justice of egalitarianism under communism is the source of their tremendous conviction in Marxist dogma, a conviction which can be best described as religious. The manner in which Marxist concepts of justice become a source of international law is indirect. In the interests of scientific objectivity, morality and justice are explicitly excluded from the basis of Marxist theory. Implicitly, however, they are present at its foundation. Words used to describe capitalism are derogatory as a rule, whereas descriptions of socialism and communism employ words with positive connotations. In this way, with-

82. B. Talalaev, " V.I. Lenin o mezhdunarodnykh dogovorakh" (V.I. Lenin on international treaties), *SGP*, no. 4, 1958, p. 23, *quoted in* Triska and Slusser, *Soviet Treaties*, p. 30.
83. Tunkin, *Theory of International Law*, p. 51.
84. *Ibid.*, p. 302.
85. *Ibid.*, p. 301.
86. *Ibid.*, p. 228.

out mentioning such words as "immoral" and "unjust," it is made clear that capitalism is inherently immoral and socialism provides a road to justice. By claiming that history inevitably leads from capitalism through socialism to communism, Marxists use a seemingly objective idea to convey the underlying notion that justice will ultimately prevail.[87] Hence, the supposedly objective scientific laws of societal development are presented so that the reader absorbs them as if they were moral laws. Unaware of how subjective are the effects of their "scientific" doctrine, Marxists thus mislead themselves into believing that their outlook is independent of morality.

Therefore, when Tunkin writes that "the laws of societal development . . . exist independently of the will and desire of people" and "are reflected in the principles and norms of international law,"[88] he is describing laws which are apparently independent of morality, but which for Marxists are full of connotations of justice. Although the Soviet approach is explicitly positivist, there is an implicitly naturalist element in it. This is most apparent when Soviet jurists deal with the subject of *bellum iustum*: in their view, a war fought for socialism and against imperialism is a just war. In other words, despite what is written in positive law about war, their ultimate assessment of the legality of a war is based on whether it is in harmony with the laws of history, which means whether it agrees with the naturalist element in Marxism. In 1950 it was said that "the task of the Soviet lawyers consists in giving a learned justification of the legality of partisan wars on territory occupied by the imperialist aggressors, keeping in mind the Leninist-Stalinist teachings on just and unjust wars."[89] In 1970 Tunkin provided his learned justification in his commentary on the "Declaration on Principles of International Law" adopted by the U.N. in that year:

> . . . the right of peoples of dependent territories to use force 'against colonial domination' was not expressly reflected in the Declaration, since the western powers resolutely opposed the inclusion of this provision in the Declaration. However, . . . it is obvious that colonial peoples may use retaliatory forcible actions by virtue of the right to self-defense in their liberation struggle against 'forcible actions.'[90]

87. "The idea of 'justice' in this context appears throughout in a strictly subordinate role, as a quality incidental to the notion of 'progress' and a derivative product of the latter: what is historically 'progressive' is automatically also 'just' ". George Ginsburgs, " 'Wars of National Liberation' and the Modern Law of Nations — the Soviet Thesis," in *The Soviet Impact on International Law,* ed. Hans W. Baade, New York, 1965, p. 89.
88. Tunkin, *Theory of International Law,* p. 231.
89. A. Mankovskii, *SGP,* no. 7, 1950, p. 69, *quoted by* Ginsburgs, "Wars of National Liberation," p. 91.
90. Tunkin, *Theory of International Law,* pp. 54-55.

Thus, a war is just if it is in self-defense against force, but force is interpreted not only as armed force but also as "other kinds of force (e.g., economic force), a view that representatives of the socialist and developing states favor."[91] Of course, whether or not a people is subjected to economic force is deduced from the laws of societal development. Thus, Soviets implicitly appeal to their naturalist instincts in assessing the legality of wars.

The combination of their implicit conviction in natural law and their confidence that their theory is scientific, leads Soviet jurists to adopt a view that is essentially messianic in tone. The following quotations from Tunkin illustrate how Soviets credit themselves with most of the advancements in international law in the twentieth century:

> If the development of international law in the nineteenth century was marked by the preponderant influence of the international legal ideas and principles of the bourgeois revolutions, and above all the French bourgeois revolution, the development of international law after the Great October Socialist Revolution has been dominated by the international legal ideas and principles of this revolution.[92]
>
> Contemporary international law, reflecting changes that have taken place in society after the Great October Socialist Revolution, has turned its face to the human being.[93]

In this fashion, traditional international law has been transformed into a new, historic type of international law.[94]

The new principles which have been introduced into international law as "the result of the struggle of progressive forces against reaction"[95] (which are sometimes collectively referred to as the principles of peaceful coexistence after the one which is considered to be the most important) include:

(1) non-aggression
(2) peaceful settlement of disputes
(3) self-determination of peoples
(4) peaceful coexistence
(5) disarmament
(6) respect for human rights
(7) prohibition of war propaganda[96]

91. *Ibid.*, p. 54.
92. Tunkin, "International Law," p. 28.
93. *Ibid.*, p. 42.
94. *Ibid.*, p. 43.
95. Tunkin, *Theory of International Law*, p. 49.
96. *Ibid.*, pp. 49-86.

Most of these principles, Soviets claim, are rooted in Lenin's "Decree on Peace of 1917."[97] The fact that the U.S.S.R. did not participate in the League of Nations Declaration on Aggressive Wars (1927) and the Kellogg-Briand Pact of 1928 does not detract from its "decisive role" in the establishment of these principles.[98] Tunkin writes that the Soviet role in formulating the UN Charter led to strengthening the principle of self-determination and other human rights against the opposition of Western powers.[99] Similarly, at the Disarmament Conference of 1925 the Soviet Union advocated complete disarmament of all states, but its proposal was rejected.[100]

These efforts "*ex post facto* to establish an appropriately ancient historical lineage for 'Peaceful Coexistence' by attributing it to Lenin himself"[101] were initiated, a Western jurist proposes, only after the U.S.S.R. had adopted the slogan, and its associated concepts, from the presentations by Yugoslav jurists at the 1956 Reunion of the International Law Association.[102] One can also hypothesize that the Yugoslavs were directly influenced in their promotion of these principles by the Chinese-Indian Treaty of 1954 which listed the so-called *Panch Shila* principles of non-aggression, non-intervention, equality and peaceful coexistence.[103]

Building the impression of the Soviet Union as a crusader is made easier by the Soviet Union's advocacy of radical positions at international conferences. Western delegates react by opposing Soviet proposals as unrealistic. Thus, they allow themselves to be portrayed as reactionary imperialists. Sometimes the Soviets have achieved their objective of impressing a radical image of themselves upon Westerners. John Hazard, a prominent American international lawyer, wrote with conviction that

> The Soviet Union has championed action rather than the slower progress usually favored by modern Americans in their search for means of blocking war.[104]

But experience has taught the West to be skeptical. Thus, McWhinney's commentary on the principles of peaceful coexistence included the warning that:

97. *Ibid.*
98. *Ibid.*, p. 51.
99. *Ibid.*, pp. 60-69 and pp. 79-83.
100. *Ibid.*, p. 76.
101. Edward McWhinney, *"Peaceful Coexistence" and Soviet-Western International Law*, Leyden, 1964, p. 129.
102. *Ibid.*, p. 130.
103. *Cf.* Hildebrand, *Soviet International Law*, p. 47. For a detailed account of the origin of the principle of peaceful coexistence see John Hazard, "Legal Research on 'Peaceful Coexistence,' " *AJIL*, vol. 51, 1957, pp. 63-71.
104. John Hazard, "The Soviet Concept of International Law," *Proceedings of American Society of International Law*, vol. 33, 1939, p. 41.

> we need to know what Soviet decision-makers mean by [these principles] in concrete cases before we can be sure that any agreement or accord between East and West based on 'peaceful coexistence' will be a substantial and not merely a verbal one.[105]

As well as praising themselves for contributing new principles, the Soviets credit themselves and their allies with "the further development and strengthening of the old democratic principles of international law, such as the principles of respect for state sovereignty, non-interference in internal affairs, equality of states, good neighborly fulfillment of international obligations (*pacta sunt servanda*), and so forth."[106]

The chauvinism of the Soviets' position is manifest further in their proclamation that a historically more advanced form of international law regulating the relations between the countries of the socialist commonwealth, based on the existence of socialist internationalism, has been achieved. The importance attached to the distinction between this law and the law existing between the socialist and capitalist camps is indicated by the fact that Tunkin devoted a full chapter of platitudes to it.[107] Socialist internationalism is described in abstract terms of fraternal friendship, cooperation, and development of mutual interests but facts such as the break in relations with Communist China do not affect the theory. As one Soviet jurist put it:

> The dispute and differences which have of late arisen in the world Communist movement and which, no doubt, are of a temporary nature, do not in any way signify change in the general lines along which international socialist relations develop.[108]

The theoretical development of the principles of international law in Soviet writings does not substantiate their view that they have contributed something new. As McWhinney notes about the principles of peaceful coexistence:

> it will be recognized at the outset that this is a catalogue of abstract generalities with which Western jurists can have no quarrel, as such, for indeed their ultimate sources, as verbal formulations, are to be found in the mainsprings of Western conceptions of international law.[109]

105. Edward McWhinney, " 'Peaceful Co-existence' and Soviet-Western International Law," *AJIL*, vol. 56, 1962, p. 954.
106. Tunkin, *Theory of International Law*, p. 86.
107. *Ibid.*, ch. 19.
108. Sanakoyev, "Main Tendencies in the Development of the Community of Socialist Countries," *International Affairs*, no. 10 (October 1961), p. 8, *quoted in* Ramundo, *Socialist Theory*, pp. 48-49.
109. McWhinney, "Peaceful Co-existence," p. 954.

Similarly, after a detailed analysis of both doctrines Ramundo concludes:

> As fundamental legal principles, 'peaceful coexistence' and 'socialist internationalism' are devoid of meaningful, substantive content; except, perhaps, to provide license for Soviet freedom of action in its relations with members of the capitalist and socialist camps. General acceptance of these principles as the fundamental international norms is sought as a means of enhancing the Soviet image and further dignifying the 'inexorable' march to communism.[110]

Despite its pretensions of progress and historical advancement, another feature of present Soviet theory is its conservatism and respect for the status quo in the structure of international law. There are few visions of practical developments in the immediate future. This is illustrated, for example, in Soviet positions on international organizations. International organizations are recognized as having legal personality,[111] but resolutions of such organizations generally "have the character of recommendations and are not legally binding upon members of the organization";[112] and contemplation of sacrifice of some sovereignty by member states in the near future to international organizations or to an embryonic future world state is criticized as bourgeois imperialism.[113] This view is presented despite the fact that the U.S.S.R. in practice has constructed an international system in Europe and Asia among not only "socialist" states but also between the so-called "Finlandized" states which involves considerable sacrifice of sovereignty. Although, following the invasion of Czechoslavakia in 1968, *Pravda* indicated that it viewed the sovereignty of socialist countries as subordinate to socialist internationalism,[114] nevertheless Tunkin's text, published in 1970, rejects the existence of a "doctrine of limited sovereignty."[115]

The leaders of the Soviet Union are content with the status quo. Therefore, Soviet doctrine toward international organizations which is "specifically intended to provide theoretical support for Soviet government moves and maneuvers inside the various international organizations of which the Soviet Union is a member"[116] is a doctrine which contemplates little change in the relationship of nation-states to international organizations.

110. Ramundo, *Socialist Theory*, p. 57.
111. Tunkin, *Theory of International Law*, p. 357.
112. *Ibid.*, p. 321.
113. *Ibid.*, pp. 376-378.
114. Charles Baroch, *The Soviet Doctrine of Sovereignty: The So-called Brezhnev Doctrine*, American Bar Association, 1970.
115. Tunkin, *Theory of International Law*, p. 440.
116. Christopher Osakwe, "The Soviet Union and the Law of International Organizations," (J.S.D. dissertation) University of Illinois at Urbana-Champaign, 1974, p. 309.

In summary, present Soviet theory of international law is abstract, chauvinistic, and conservative. As a result of the work of Tunkin, it has become more internally consistent. On its face, it is predominantly positivist, but possesses strong implicit notions of natural law. Furthermore, it "has remained thematically within the sphere of the legal tradition it shared with the West."[117]

On the basis of the history of its development, one can expect that the imminent succession of Brezhnev and his old guard may lead to rewriting of the theory with new emphasis and new slogans. But what will almost certainly not change is the role of international legal theory as a rationalization of Soviet foreign policy. Triska and Slusser ask:

> Is it not legitimate to hope that this imposing array of principles will some day, if not now, constitute a wholesome influence on Soviet treaty practice and gradually lead the Soviet Union to adopt a policy of live and let live in a world of peace and justice?

They do not hesitate to answer:

> Regretfully we must state our conclusion that the doctrine of Soviet international law cannot now exert such an influence, nor does it seem likely in the foreseeable future. The Soviet discipline of international law performs a subservient and supporting function in the formulation of Soviet foreign policy.[118]

This conclusion, reached by Triska and Slusser seventeen years ago, is apparently just as valid today as it was then.

117. Grzybowski, *Soviet International Law*, p. 22.
118. Triska and Slusser, *Soviet Treaties*, p. 397.