PERESTROIKA AND HUMAN RIGHTS: STEPS IN THE RIGHT DIRECTION

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Soviet human rights policies have long played a major role in influencing foreign perceptions of the Soviet Union. However, human rights, or the rights of individuals, have not always received the same attention and respect from the Soviet leadership. Instead, Soviet leaders traditionally have insisted that all rights are derived from the state, and that in fact, Communist societies have eliminated the social foundations of civil and political injustice. Since 1985, however, Mikhail S. Gorbachev has implemented significant and highly visible reform measures acknowledging that problems remain in the Soviet system and protecting the rights of the individual. Emily Copeland examines the evolution of Soviet human rights policy, focusing on the changes implemented under Gorbachev. She argues that Gorbachev's reforms represent more than political expediencies—that they are a key component of a revised conceptual framework and practical approach that affect and are affected by both foreign and domestic policy.

The Soviet approach to human rights has changed dramatically since Mikhail Gorbachev assumed power in March 1985. The Soviet government has released political prisoners, allowed international observers to visit labor camps and psychiatric hospitals, and permitted a new wave of Jewish emigration. It has also passed laws that facilitate legal action against government officials and permit the formation of political and social associations. Gorbachev's assertion that these changes stem solely from shifts in domestic policy merits evaluation. What factors account for this remarkable transformation of official Soviet attitudes and practices concerning human rights? Is this shift truly a reflection of domestic considerations, including changes in ideology, or is it only a means to achieve foreign policy ends?

This analysis of Soviet human rights policy will argue that a fundamental ideological shift has occurred within the top Soviet leadership and that the traditional Soviet definition of human rights no longer applies. Recent changes in Soviet human rights policy are not just means to achieve certain ends; they are connected to, and in some cases driven by, a deeper process of structural change. Soviet "New Thinking" has enabled Soviet officials to reassess old foreign policy problems, revise their image of domestic dissidence, and reevaluate the role of laws and legality in the Soviet Union and abroad. Other factors also have played an important, supporting role. A convergence of

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interests between domestic and foreign political considerations has reinforced official support for human rights and muted potential opposition to the reforms. Moreover, the evolution of international human rights law since 1945 has put human rights on the international agenda.

The new official attitudes toward human rights coincide with Gorbachev's primary objective of restructuring the Soviet economy; real guarantees for individual protection are vital for stimulating entrepreneurial economic activity. Gorbachev's reforms also require the support of the intelligentsia who have long advocated improved human rights. Yet, Soviet actions suggest that these improvements were not made solely to meet domestic requirements. Moreover, other important domestic human rights considerations have been neglected, or in the sphere of economic rights, perhaps even undermined. For example, the right to work is being modified to meet the demands of economic efficiency.

Contrary to Gorbachev's repeated statements emphasizing domestic concerns, foreign policy considerations, not domestic ones, have been the major catalyst behind initial changes.[1] In the early 1980s Soviet foreign policy suffered from a credibility crisis. The US shift from détente to a renewed arms race strained the Soviet economy. Yet, the USSR could not achieve an arms control agreement and slow down the arms race without addressing its human rights record, since the United States insisted that the resolution of regional conflicts and improvements in human rights be preconditions to arms negotiations. Moreover, Soviet initiatives to improve trade with the United States faced restrictive US legislation linking trade to improved emigration opportunities from the Soviet Union. Thus, all three foreign policy areas of utmost concern to the new Gorbachev leadership—arms control, improved US-USSR relations, and trade—were linked to human rights.

Under the new Soviet foreign policy, officials acknowledge that human rights issues will not disappear. An improved domestic handling of human rights is both a prerequisite to, and a means by which, important foreign policy objectives can be achieved. Obviously, the Soviet Union is in the midst of a transition; therefore the jury is still out concerning the final fate of *perestroika*. Despite changes already enacted, many structural and administrative barriers remain to effective implementation of a human rights policy that meets the USSR's international commitments and accepted international standards.

This paper will provide an analysis of the Gorbachev era and the relative importance of ideological, domestic, foreign policy, and security factors for bringing about change in human rights policies. Before embarking on the analysis, it is important to define briefly important terms and concepts, discuss the linkage between foreign policy and human rights, and describe the evolution of Soviet human rights policy.

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1. There are numerous examples of such statements. See for example, Mikhail S. Gorbachev, *Perestroika: New Thinking for Our Country and the World* (New York: Harper & Row, 1987), 45–49; Mikhail S. Gorbachev, *Speeches and Writings* Vols. 1 and 2 (Oxford: Pergamon Press, 1986 and 1987); and Sylvia Woodby, *Gorbachev and the Decline of Ideology in Soviet Foreign Policy* (Boulder, Colo.: Westview Press, 1989).

Ideology and Terminology

Ideology is a crucial element in the human rights debate because differences between the Soviet and western conceptions of human rights partially explain the traditionally defensive response of the Soviet leadership to western accusations of human rights abuses. Before the ascent of Gorbachev, any suggestion of a human rights violation in the USSR was considered an attempt to challenge the foundations of the Soviet state.[2] This ideological constraint precluded flexibility on human rights and reinforced the combative relationship between the United States and the Soviet Union.

Until 1985 the Soviet leadership argued that all rights were derived from the state and therefore denied the existence of an individual sphere of rights protected from the state.[3] It further argued that human rights violations could not occur in a Communist country because the system had eliminated "the social foundations for any injustice, thereby making their infringement materially impossible."[4] Thus, juridical guarantees were less crucial in a Communist state since the absence of class conflict provided economic, political, ideological, and social guarantees that rendered legal protection superfluous.[5] Socioeconomic rights received priority over political and civil rights, since the former directly affected the individual's well-being, "of which the political domain is but a consequence, a projection."[6] The 1977 Soviet Constitution contains numerous socioeconomic guarantees including the rights to work, paid rest, health care, social security, housing, education, and culture. However, some of the political rights enumerated in the 1966 United Nations Human Rights Covenants, such as freedom of religious education, the right to strike, and freedom of movement, are notably absent.[7]

The traditional Soviet view of human rights rejected the western idea of the inalienable rights of the individual safe-guarded from state intervention.[8] Instead, Soviet leaders emphasized citizens' rights that bound the individual to the state. Article 50 of the 1977 Constitution subordinates political freedoms to "the peoples' interests" and to the task of "strengthening and develop[ing] the socialist system."[9] Article 59 states that the "citizens' exercise of their rights and freedoms is inseparable from the performance of their duties and obligations."[10]

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2. For example, the Soviet Union considered President Jimmy Carter's human rights initiatives highly threatening. See Raymond L. Garthoff, *Detente and Confrontation* (Washington, D.C.: The Brookings Institution, 1985), 568.
3. Roberto Toscano, *Soviet Human Rights Policy and Perestroika* (Lanham, Md.: University Press of America, Inc., 1989), 8–9.
4. Ibid., 13.
5. Ibid., 12–13.
6. Ibid., 11.
7. John N. Hazard, "Union of Soviet Socialist Republics, 1977 Constitution," in *Constitutions of the World* Vol. XVIII (Dobbs Ferry, N.Y.: Oceana Publishers Inc., 1978), 3. (Commentary preceding English language version of the 1977 Constitution).
8. These rights are embodied in the UN 1948 Universal Declaration of Human Rights and have been interpreted in the two 1966 UN Covenants concerning civil and political rights and economic, social, and cultural rights, respectively.
9. Hazard, 10.
10. Article 62 articulates these duties by commanding citizens to "[s]afeguard the interests of the Soviet state,

Soviet terminology also demonstrates the USSR's ideological schism with the West. Prior to 1985 the Soviet Union never used the term "human rights" (*prava cheloveka*) for internal matters. In the domestic sphere, the term "citizens' rights" (*grazhdanskie prava*), explicitly recognizing the duties of the citizens, was used. The 1977 Constitution only mentioned the term human rights as "one of the principles on which relations with other States are based."[11] In fact, Soviet officials prefer to use the term "humanitarian affairs" which encompasses other issues in addition to human rights.

Human Rights and Foreign Policy

Until World War II a nation-state basically could treat its citizens as it saw fit.[12] Since 1945, however, the development of international norms concerning human rights has limited a state's autonomy in this area. The atrocities of World War II led the international community to adopt a series of treaties and resolutions detailing the rights of individuals. The UN Charter provided the foundation for these developments. Under Article 56 of the Charter, all UN member states pledge to promote peace and human rights. However, Article 2(7) of the Charter also prohibits UN intervention in the domestic affairs of any state, and the Soviet Union has asserted that under this provision, intervention by member states on human rights grounds is justified only if the alleged violations pose a substantial threat to international peace and security.

Despite these objections, the international community has promulgated additional treaties and resolutions extending the scope of international human rights law. In 1948 the UN General Assembly adopted the Universal Declaration of Human Rights[13]—a non-binding resolution that nevertheless carries significant political weight. The declaration sets out the rights of individuals and has received widespread support. The Soviet Union played an active role in drafting the declaration, but abstained from voting for its adoption.[14] In 1966 the UN finalized the International Covenant on Civil and Political Rights[15] and the International Covenant on Economic, Social and Cultural

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to help strengthen its might and prestige." Constitution of the USSR, Article 62, trans. in *Constitutions of the World* Vol. XVIII, 30.

11. Hazard, 25.
12. See Richard B. Bilder, "An Overview of International Human Rights Law," in *Guide to International Human Rights Practice,* ed. Hurst Hannum (Philadelphia: University of Pennsylvania Press, 1984), 3–19.
13. General Assembly Resolution 217(A)(III), United Nations Document A/810, 71 (1948).
14. Norman A. Graebner, "Human Rights and Foreign Policy: The Historic Connection," in *The Moral Imperatives of Human Rights: A World Survey,* ed. Kenneth W. Thompson (Washington, D.C.: University Press of America, Inc., 1980), 46. The Soviet Union has since recognized the Universal Declaration. For example, in March of 1989 Gorbachev told the UN General Assembly, "I would like to join the voice of my country in the expression of high appreciation of the significance of the Universal Declaration of Human Rights adopted 40 years ago on December 10, 1948." Mikhail Gorbachev as quoted in "U.S. Commemorates 40th Anniversary of the Universal Declaration of Human Rights," *Department of State Bulletin* (March 1989). (Transcription of comments by Assistant Secretary Richard Schifter on the occasion of a White House ceremony on December 8, 1988).
15. General Assembly Resolution 2200(XXI), 21 U.N. GAOR, Supp. (No. 16) 52, United Nations Document A/6316 (1966).

Rights.[16] In 1975 the participating states of the Conference on Security and Cooperation in Europe (CSCE) concluded the Helsinki Accords, the most politically significant human rights agreement to which the USSR is a signatory.

Individual states also have incorporated human rights issues into their bilateral foreign policy relations. Since the 1970s the US Congress has linked foreign aid, trade credits, and Most Favored Nation status (MFN) to the observance of human rights standards, and a coalition of human rights activists and US conservatives has used this linkage to make aggressive demands on the Soviet Union. For example, under the Jackson-Vanik Amendment, the Soviet Union cannot receive MFN until it loosens its restrictive emigration policies.[17]

Historically Soviet officials considered US foreign policy promoting human rights to be a hypocritical and thinly veiled attempt to discredit the Soviet Union.[18] These officials noted the inconsistency of US policy by pointing out, for example, that the United States apparently uses different standards to judge the human rights practices of the USSR and El Salvador. They argued further that the US attitude toward human rights in the USSR also changes with the political climate in the United States. When the United States wishes to confront the USSR, human rights violations become a rallying cause; when the United States wishes to improve relations, human rights concerns are quietly addressed through diplomatic channels.

Although the US policy may be motivated at least in part by political considerations, it nevertheless reflects an honest and growing concern with human rights, a concern shared by much of the world. For most of the past forty-five years, the Soviet leadership, perhaps blinded by their belief that the West was using human rights to undermine the USSR, failed to respond to this growing international concern. While the rest of the world moved to increased cooperation concerning human rights, the Soviet Union continued to ignore human rights challenges and resisted international cooperation in monitoring human rights around the world.

Development of Soviet Policies Toward Human Rights

The Early Years: 1917–1964

In the sphere of individual political rights, current Soviet reformist leaders are contending with seventy years of hardened official attitudes that condemn dissent and non-conformity.[19] The traditional Soviet theory of human rights

16. General Assembly Resolution 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 49, United Nations Document A/6316 (1966).
17. The text of the Amendment is located in 19 United States Code §2432 (3 January 1974).
18. Walter Parchomenko, *Soviet Images of Dissidents and Nonconformists* (New York: Praeger, 1986), 133.
19. Some analysts assert that these attitudes and practices also existed in tsarist Russia. See for example, Rudolf L. Tökés, "Varieties of Dissent: An Overview," in *Dissent in the USSR*, ed. Rudolf L. Tökés (Baltimore: Johns Hopkins University Press, 1975), 7; see also Parchomenko, 50.

emerged in the 1930s "after the defeat of radicalism in the 1920s and the consolidation of the Soviet legal system under Stalin."[20] Stalin's program of economic modernization required a radicalization of ideology in order to force change. Political considerations predominated over all other concerns, including law and human rights. As the XXII CPSU Congress noted, under Stalin "there were laws (*zakony*), but no legality (*zakonnost*)."[21] Massive human rights violations occurred, including political executions, forced deportations, religious persecution, and collectivization. The rights of the individual were totally subsumed by the interests of the state as determined by one man. As early as the mid 1930s, the need for stability curtailed Stalin's power to engage in arbitrary rule, and the 1936 Soviet Constitution was intended to provide some stability through legal guarantees. However, the established practice of rule by administrative fiat undermined the constitutionally created protection. Furthermore, given the extra-legal status of the Communist party, the restricted level of law and juridical independence, the 1936 Constitution did not provide much real protection.[22]

Despite massive violations under Stalin's rule, the domestic human rights situation in the Soviet Union did not become an international issue for three reasons. First, information on internal events in the Soviet Union was scarce; second, prior to World War II countries had unrestricted jurisdiction over their citizens; and third, during World War II the allies desperately wanted Soviet support and therefore were hesitant to criticize Soviet behavior.

After World War II, the scenario changed notably. Mounting suspicion of Soviet motives and tension over the future of Europe led to increased distrust of the USSR. Deteriorating political relations, combined with both international concern about human rights and expanded information regarding past Soviet human rights violations, increased western interest in the Soviet human rights record.

Khrushchev's denunciation of Stalin in 1956 revealed many of the excesses that had occurred under Stalin. Khrushchev hoped to restore a degree of stability to the system and repair the damage created by Stalin. This required clearer delineation between the state and individual, a decline in arbitrary behavior by Soviet leaders, and increased reliance on law as the governing force in Soviet society. However, Khrushchev never revised or faulted the underlying ideological conception of human rights; he only relaxed the application of Marxist-Leninist ideology and portrayed past excesses as the result of Stalin's rule. Thus, under Khrushchev tolerance for social and cultural rights increased, but systemic change did not occur. The authorities still continued to reserve the right to regulate dissent.[23]

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20. Toscano, 5.
21. Ibid., 6.
22. Ibid.
23. Frederick C. Barghoorn, "The Post-Khrushchev Campaign to Suppress Dissent: Perspectives, Strategies and Techniques of Repression," in Tökés, 36.

The Brezhnev Era: 1964–1982

During Leonid Brezhnev's long tenure as general secretary, human rights emerged as an important issue in both domestic and foreign policy. Soviet treatment of intellectual dissidents, religious activists, and Jews seeking to emigrate, as well as the leadership's handling of dissent in the Warsaw Pact nations, generated western criticism and concern. During the 1960s and 1970s dissidents in the Soviet Union developed an increasingly sophisticated movement based heavily on the ideology and rhetoric of human rights.[24] The revival of religious activity and the emergence of intellectual dissent led to the return of official images of dissidents and nonconformists as traitors and enemies of the state.[25] Brezhnev curtailed the freedoms of the Khrushchev era and reinforced traditional party doctrine on human rights. However, his policy reversal was not absolute. The general crackdown was accompanied by occasional liberal policies that Brezhnev considered politically expedient, such as the introduction in 1966 of a system of nationality quotas intended to increase the representation of various ethnic groups in universities and leadership positions. At the same time, however, Soviet officials continued to determine what constituted legitimate and illegitimate criticism in the domestic sphere.[26] The 1966 trials and sentencing of Andrei Sinyavsky and Yuli Daniel for publishing allegedly anti-Soviet writings abroad, the 1968 trial of Alexander Ginsberg, and the expulsion of Alexander Solzhenitsyn in 1969 all illustrate the trend toward re-Stalinization that continued into the early 1980s.[27]

The Brezhnev government wanted to stimulate a sluggish economy and obtain international acceptance of post-World War II borders in Europe. The leadership rejected structural reform as a means of reversing the economic decline and turned instead to foreign technology and trade. However, the hostile international climate of the cold war limited Soviet access to technology and required heavy military expenditures. In order to achieve both of these objectives, the Soviet leadership took three steps that directly affected human rights in the Soviet Union. It authorized the first wave of Jewish emigration, signed the 1966 UN Covenants on Human Rights, and participated in the CSCE process that resulted in the 1975 Helsinki Accords.

From the Soviet leadership's perspective, these actions had mixed results. The USSR did secure international recognition of the post-World War II borders in the Helsinki Accords, but in exchange it was forced to uphold certain human rights standards.[28] Within the Soviet Union, human rights

24. Howard L. Biddulph, "Protest Strategies of Soviet Intellectual Opposition," in Tökés, 98–99. The Soviet leadership considered intellectual dissent in Eastern Europe to be a Soviet "domestic" issue.
25. Parchomenko, 51.
26. See for example, Leonid Brezhnev, "Sovietskie Profsouzi Vliyatelnaya Sila Nashego Obshestva," *Pravda,* 22 March 1977 ("Soviet Trade-Unions are the Strength of Our Society").
27. Parchomenko, 82.
28. Although the covenants were signed first, they did not go into effect until six months after the signing of the Helsinki Accords.

supporters seized upon this agreement as a means for promoting their concerns, and ultimately the Accords generated increased interaction between domestic and foreign human rights advocates. The net result was increased foreign interest in the Soviet domestic human rights situation. Soviet officials considered this American interest in emigration policies to be anti-Soviet and regarded it as an improper interference in the USSR's internal affairs. It is this legacy of seventy years of hardened official attitudes toward dissent and human rights that makes the changes under Gorbachev even more remarkable.

The Gorbachev Era: March 1985 to the Present

By the summer of 1989, the Soviet Union had addressed all of the human rights concerns discussed above.[29] Emigration rose steeply, reaching its highest level ever.[30] An emphasis on the rule of law[31] and the need to institutionalize reform has led to a wave of new legislation regarding numerous civil and political rights, including emigration, suffrage, freedom of association, the rights of psychiatric patients, and protection of these legal rights through

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judicial review of the actions of government officials. Soviet authorities have allowed foreign delegations to visit psychiatric hospitals and a labor camp, and also claim to have removed over two million people from the register of the mentally ill.[32] These events certainly present a stark contrast to past Soviet practices, but why have these changes occurred? More specifically, what has been the relative importance of domestic, economic, ideological, security, and foreign policy factors in stimulating change?

Despite Gorbachev's assertion that Soviet foreign policy is determined by domestic considerations rather than external pressures,[33] it would be too

29. David K. Shipler, "Dateline USSR: On the Human Rights Track," *Foreign Policy* No. 75 (Summer 1989): 165.
30. Lawrence J. Goodrich, "US Food Credits for Soviet Union Signal Warming of Once Icy Ties," *The Christian Science Monitor,* 20 December 1990, 7.
31. The rule of law entails equality before the law and procedural due process.
32. "No Dissenters in Psychiatric Hospitals, Soviet Official Says," *The Reuter Library Report,* 13 July 1989, AM Cycle.
33. Seweryn Bialer and Joan Afferica, "The Genesis of Gorbachev's World," *Foreign Affairs* Vol. 64, No. 3 (1986): 626.

simplistic to attribute all the improvements in human rights and related foreign policy shifts solely to domestic concerns. For example, the US policy of linking trade and human rights influenced Soviet foreign policy as well as Soviet domestic politics. Still, foreign policy interests alone did not induce these changes; the structural change associated with *perestroika* required a supportive domestic political environment. However, once the requisite ideological shifts occurred, the amelioration of some human rights violations served both foreign policy and domestic interests.

For the past five years, the Soviet leadership has focused mainly on the foreign dimension of the human rights problem. This focus is due both to the advocacy of the foreign policy community within the Soviet Union and the fact that the manner in which the East-West debate was framed facilitated efforts to address human rights. However, the leadership now must turn to more difficult domestic questions such as the autonomy of the republics and the institutionalization of democratization.

Domestic Factors

When Gorbachev came to power in 1985, his primary task was to improve the performance of the Soviet economy. At first Gorbachev continued Andropov's disciplinary efforts, but the campaign produced few results. He then switched to a policy stressing material incentives that implicitly acknowledged the importance of individual initiative as a means to propel economic reform. By mid 1987 Gorbachev had begun emphasizing the protection of individual rights, the rule of law, and democratization in an attempt to mobilize the masses and pressure the conservative bureaucracy. The initial failure of focusing solely on economic reforms forced Gorbachev to implement broader political reforms (e.g., *glasnost* and democratization) in order to support the economic reform process. Political reforms, which included human rights, were and remain important to the intelligentsia, whose support is essential to the success of *perestroika*. Previously, even where appropriate legal protection existed, enforcement remained a problem. The Soviet leadership also realized that protecting the rights of the individual could benefit the collective.

Rather ironically, *perestroika* has had the apparent effect of decreasing the Soviet commitment to economic rights such as the "right to work."[34] Perhaps at least in the short-term, *perestroika* will undermine the "material guarantees" of socialism and increase unemployment. In fact, however, the decline in the standard of living and life expectancy, housing shortages, and an increase in infant mortality had all reflected on the leadership's credibility and called into

34. Economic rights are cited as a major advantage of the Communist system, but L.A. Kostin, First Deputy Chairman of *Goskomtrud*, the state committee for labor, noted that "[the state-guaranteed right to work] should not be oversimplified. For all its humanitarianism, our society cannot guarantee that everybody, throughout their working life, will be able to work in the field they have chosen once and for all, or in the same location." L. A. Kostin, "Intensifikatsiya i Problemy Trudoustroistva," *Agitator* No. 20 (October, 1986): 22, as quoted in Aaron Trehub, "Social and Economic Rights in the Soviet Union," *Survey* Vol. 29, No. 4 (August, 1989): 9.

question the superiority of the Soviet system.[35] The Gorbachev leadership may be attempting to rewrite the social compact between the state and its citizens as demonstrated by changes in ideology.

Ideological Factors

Gorbachev's determination to decentralize and wrench power away from the bureaucracy lies at the heart of his continuing reform program.[36] Unlike his predecessors, Gorbachev admits that the system is part of the problem. As Khrushchev's son-in-law, Aleksei Adzhubei, explained: "Khrushchev tried to dethrone *Stalin.* Gorbachev is fighting *Stalinism.* . . ."[37] This official recognition that the system may not be perfect is the most important change to date for the domestic handling of human rights. Gorbachev's new thinking calls for a critical reassessment of past policies.[38] This has revolutionized Soviet official attitudes toward dissent and legitimized criticism of the system. Moreover, the willingness of those at the highest levels of power to criticize past leaders and their policies makes alternative analyses of past problems possible. Thus the current leadership can admit that many anti-Soviet criticisms in the past came from loyal citizens. This in turn has led to a rehabilitation of dissidents and paved the way for the release of individuals held under the subversive activities law.

The turnaround in the official attitude toward dissent has had extreme effects. At first Gorbachev actually tried to encourage criticism, hoping that people would limit themselves to constructive criticism of the new regime. The Soviet leadership was unprepared for the volume of criticism actually expressed and the release of the intense frustration felt by the previously passive civil society concerning nationality, civil, and political demands.

The second major ideological change supporting human rights is the newfound emphasis on the rule of law. This implies removing inappropriate political intervention from the legal system and strengthening (or perhaps creating) an individual sphere of rights safeguarded from state interference. The Gorbachev leadership has recognized that there must be compliance with international human rights standards, that human rights are inherent and

35. Peter H. Juviler, "Guaranteeing Human Rights in the Soviet Context," *Columbia Journal of Transnational Law* Vol. 28, No. 1 (1990): 134–35.

36. Gorbachev presents the ideological framework in *Perestroika: New Thinking for Our Country and the World,* which was finished in the summer of 1987. *Perestroika* has continued to evolve since 1987 with an increasing emphasis on the universal human values discussed in Gorbachev's December 7, 1988, speech to the United Nations.

37. Seweryn Bialer, "The Changing Soviet Political System: The 19th Party Congress and After," 206, in *Inside Gorbachev's Russia: Politics, Society and Nationality,* ed. Seweryn Bialer (Boulder, Colo.: Westview Press, 1989).

38. "New thinking for Soviet foreign policy has been defined as thinking which is 'consistently scientific and free from historically outdated stereotypes,' and 'reflects the realities of the contemporary world.' By 1989 this definition was expanded to include the elevation of the significance of 'common human values' and morality in foreign policy, as well as the 'deideologization of interstate relations.'" Woodby, 16, as referenced.

unconditional, that there is no hierarchy of rights, and that legal guarantees are essential.[39] Soviet legal scholars now admit to underestimating the importance of legal guarantees and existing problems within the Soviet legal system.[40] In contrast to Khrushchev, who tolerated freedom of expression for purely political reasons, Gorbachev is taking steps to institutionalize tolerance by enacting laws and strengthening the judicial process. Legal reform efforts have been slow, faltering, and incomplete, raising the possibility that in the future anti-reformist leaders may be able to undo the progress that has been made. Despite recent setbacks, however, progress on legal reform still has been noteworthy,[41] though in some cases political promises of increased freedoms continue to outpace the actual changes codified in law.[42] The new law on psychiatric patients' rights provides a good example of the achievements and problems with the reform process. The new law grants patients the right to appeal, yet the right to appeal does not extend to decisions made in criminal cases—the area in which the majority of the cases of abuse have occurred in the past.[43]

The emphasis on the rule of law and universal human values has allowed the Soviet Union and the United States to find common ground to address human rights issues. The changes have bridged both the conceptual and terminology gaps between the two countries on human rights. This new approach, combined with the increased willingness of the Soviet leadership to acknowledge its past errors, permits the two states to emphasize the commonalities instead of the differences.[44] Moreover, the Soviet emphasis on pragmatism in foreign relations recognizes the evolution of human rights as a legitimate international issue that transcends class analysis. Finally, with the new foreign policy emphasis on cooperation instead of confrontation, the Soviet leadership does not have to view foreign inquiries about human rights as attempts to undermine the Soviet state. Gorbachev's de-emphasis of class analysis has come under criticism from conservatives who regard it as a betrayal of class and national interests. For example, Ligachev complained specifically about the subordination of the class approach to universal human interests.[45]

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39. Juviler, 140; see also Soviet Report to the UN, United Nations Document CCPR/C/SR.930, 8.
40. Toscano, 20.
41. For a thorough review of the legal changes since 1985, see U.S. Helsinki Watch Committee, *Toward the Rule of Law: Soviet Legal Reform and Human Rights under Perestroika* (Washington, D.C.: U.S. Helsinki Watch Committee, December 1989) (hereinafter Helsinki Watch Report); and U.S. Helsinki Watch Committee, *USSR: Human Rights Under Glasnost December 1988-March 1989* (Washington, D.C.: U.S. Helsinki Watch Committee, 1989). For additional information on the Soviet human rights record see also the reports submitted by the Soviet Union to the UN: United Nations Document CCPR/C/58/Add.8, 6 March 1990; United Nations Document CCPR/C/SR.931, 27 November 1989; United Nations Document CCPR/C/SR.930, 1 November 1989; CCPR/C/SR.928, 31 October 1989; and United Nations Document CPR/C/52/Add.6, 2 October 1989.
42. Helsinki Watch Report, 2.
43. Ibid., 3.
44. Ibid., 27–28.
45. A. Kortunov and A. Izyumov, "What is Meant by State Interests in Foreign Policy," *Literaturnaya Gazeta*, 11 July 1990, 14, in *Current Digest of the Soviet Press* Vol. XLII, No. 30 (29 August 1990): 9.

Despite Gorbachev's successes in consolidating his power and eliminating many of his political opponents, he still faces opposition from leaders who do not support his plans for reform.

Foreign Policy Factors

Gorbachev's restructuring has achieved its greatest successes in foreign policy.[46] By 1985 the Soviet Union's credibility abroad had been brought into question by its inability to restore normalcy in Poland, its failure in Afghanistan, the poor economic and political regulation of its client states, and the withdrawal of aid to black front-line states in Southern Africa.[47]

Gorbachev and others have consistently expressed their desire to change the image of the Soviet Union abroad and implement a new approach to foreign relations. As Yevgeni Primakov, a high-ranking foreign affairs advisor, explained:

> In the new Soviet foreign-policy philosophy, settlement of regional conflicts and solution of humanitarian problems including general observance of human rights, are seen as major ways of stabilizing the international situation. Soviet foreign policy practice has never paid so much attention to these matters as in recent years.[48]

While this approach is consistent with Gorbachev's new thinking, it is also politically convenient in that it meets the three US demands for improved relations: the settlement of regional conflicts, the observance of human rights, and the establishment of confidence-building measures.

As a tangible sign of the new importance of human rights, in 1986 Gorbachev created the Department of Humanitarian and Cultural Relations, which specifically handles human rights, and the Public Commission for Humanitarian Issues and Human Rights.

Despite the USSR's new-found willingness to acknowledge weaknesses in its human rights record, the leadership remains sensitive to Western criticism on human rights. For example, Gorbachev told Tom Brokaw "in no uncertain terms that the United States has little to teach the Soviet Union about human rights, and should understand that it will not be allowed to judge Soviet domestic policy."[49] Gorbachev's comments in a February 1986 interview revealed some of the early reasoning behind the Soviet defensiveness:

> I shall begin with Soviet Jews. This question has become a component in an unbridled anti-Soviet campaign, a veritable psychological war against the USSR. . . . In my view, the constant

46. Ibid., 11.

47. Bialer and Afferica, *passim.*

48. Yevgeni Primakov, "USSR Policy on Regional Conflicts," *International Affairs* No. 6 (Moscow: June 1988): 3–4.

49. George Perkovich, "Soviet Jewry and American Foreign Policy," *World Policy Journal* Vol. V, No. 3 (Summer 1988): 458–59.

> attention of anti-communist and Zionist propaganda to the fate of the Jews in the Soviet Union is hypocrisy motivated by far-reaching political goals and purposes which have nothing in common with the genuine interests of Soviet citizens of Jewish ethnic origin. . . .
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> Now about political prisoners. We have none. . . . However, any state is obliged to protect itself against those who are undermining it, calling for its subversion or destruction or who collect intelligence for foreign secret services. . . . I have been informed that a little over two hundred persons are serving time in jail for all kinds of such offenses in the Soviet Union.
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> Now for Sakharov. I have already had an occasion to answer a similar question, so I shall be brief. As we all know, he committed illegal actions. . . . Measures taken against him are consistent with Soviet laws.[50]

While defending the validity of their actions and policies, the Soviet leadership did acknowledge Western criticism and took concrete steps to respond to it. At the Vienna follow-up meeting of the CSCE meeting of November 5, 1986, then Foreign Minister Eduard Shevardnadze submitted a proposal for a human rights conference in Moscow. Two days later a list of acceptable grounds for emigration was published, and on December 19 of the same year Sakharov's banishment order was lifted. As part of the democratization effort, Gorbachev also called for multi-candidate Party elections in January 1987. On February 10, 1987, 140 prisoners were pardoned in the largest release since 1956.

However, some of Gorbachev's human rights reforms did come with strings attached. Sakharov was allowed to address the Moscow Peace Forum in February of 1987, but the media were tightly controlled, the police broke up street demonstrations that coincided with his speech, and the newspapers described the protesters as anti-Soviet agitators controlled by the West. Yet less than a week later, authorities released two well-known dissidents and allowed them to emigrate.

The Soviets continued to implement confidence-building measures in the realm of foreign affairs, including establishing an inter-governmental US-USSR working group on human rights, ending the jamming of the Voice of America, and allowing refusniks to emigrate. Despite these changes, the West remained skeptical of Soviet intentions. However, the June 1988 19th All-Union CPSU Party Conference produced major milestones for human rights in the Soviet Union. In his statement to the Conference, Gorbachev explained that "the ultimate goal of the reform of the political system and the main criterion of how successfully we implement it are the all-round enrichment of human rights and an increase in the social activeness of Soviet people."[51] Later, he noted:

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50. Mikhail S. Gorbachev, interview by the newspaper *L'humanité,* reprinted in Mikhail S. Gorbachev, *Speeches and Writings* Vol. 2, 344–45.

51. Mikhail Gorbachev, "On Progress in the Implementation of the Decisions of the 27th CPSU Congress and

> [I]n today's conditions human rights, and above all the right to life, are becoming an object of concern for the whole world community. . . .
>
> We are prepared to cooperate actively with all other countries, to exchange experience, and to scrupulously fulfill the commitments we have made.
>
> We are convinced that restructuring will make it possible to demonstrate the indisputable advantages of socialism in ensuring all human rights—social, political and individual.[52]

The 19th Party Conference also imparted a moral dimension to Soviet foreign policy, reaffirmed by Gorbachev's speech to the UN General Assembly on December 7, 1988. In his speech, Gorbachev elevated universal human values over a class approach, announced new human rights legislation and declared that all Soviet political and religious prisoners had been released.[53]

The difficulties for Gorbachev in pursuing human rights as the foundation of the new union are similar to those which he has encountered in his efforts to reform the Soviet economy—a policy is not credible if pursued only halfway.

Gorbachev also recognized that "the jurisdiction of the International Court of Justice with respect to the interpreting and applying of agreements in the field of human rights should be obligatory for all states."[54] He also announced that within the context of the Helsinki process, the USSR may remove obstructions to transmission of all foreign radio stations broadcasting to the Soviet Union.[55] This speech marked the renunciation of the conflict model of foreign policy and with it one of the most profound ideological differences between the Soviet Union and the West—the disagreement about the relationship between the state and the individual.

Events since Gorbachev's UN speech have added credibility to Gorbachev's promises. Official rhetoric has changed dramatically and an emphasis on

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the Tasks of Deepening Restructuring," in *Current Digest of the Soviet Press* Vol. XL, No. 26 (7 July 1988): 12–13 (condensed text of a report to the 19th All-Union CPSU Conference on June 28, 1988).

52. Ibid., 14.

53. Mikhail Gorbachev, "7 December 1988 Address to the United Nations," trans. in *Foreign Broadcast Information Service: Soviet Union,* 8 December 1988, 11–19.

54. Ibid., 17.

55. Ibid.; see also Eduard Shevardnadze letter to Pérez de Cuéllar, reprinted in *Pravda,* 9 March 1989, 4, in *Current Digest of the Soviet Press* Vol. XLI, No. 10 (5 April 1989): 14. In that letter Shevardnadze notified the secretary general that the Soviet Union now recognizes the mandatory jurisdiction of the World Court with respect to certain international agreements.

"universal human values" has emerged. As a result of Gorbachev's speech to the UN, the United States agreed to holding the 1991 CSCE Conference on Human Rights, scheduled for September, in Moscow.[56] The concluding document of the CSCE meeting in Vienna in January 1989 was also a step forward in that it contained detailed statements concerning human rights and an agreement on a mechanism to improve the domestic implementation of the human rights provisions.[57] The CSCE conference in Copenhagen on June 5–29 of 1990 also produced particularly encouraging results. The extensive concluding document contained statements on almost every issue of concern and established uniform standards for human rights. Remaining points of contention, namely nationality relations and minority rights, will be addressed in Geneva in July 1991 and may be a theme at the Moscow conference.[58]

Despite these improvements, *glasnost* and the new attitude on relations with the West have not been fully embraced. The Soviet press still carries articles questioning the West's motivations. For example, an article discussing a five-year suspension of the Jackson-Vanik amendment attributes the change not only to improved Soviet handling of emigration, but also to the desire of US businessmen to exploit *perestroika.*[59] In part, this explanation is intended to prove that the Soviet Union is not making these changes to please Washington.[60] Yet, the frankness of some articles is astounding and suggests that the changes in the USSR are in earnest.[61]

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56. S. Guk and S. Tosunyan, "Breakthrough at the Vienna Meeting," *Izvestia,* 4 January 1989, 4, in *Current Digest of the Soviet Press* Vol. XLI, No. 1 (1 February 1989): 22.
57. "Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, held on the Basis of the Provisions of the Final Act Relating to the Follow-up to the Conference," (Vienna: 10 July 1990), reprinted in *U.S. Department of State Bulletin* (March 1989): 21. The member states of the CSCE decided: to exchange information and respond to requests for information; to hold bilateral meetings with other Participating States in order to examine specific situations and cases; to allow any Participating State to bring a case to the attention of other Participating States; and to allow any Participating State which deems it necessary to bring up the case at a follow-up meeting or conference of the CSCE.
58. "Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE," (Copenhagen: 29 June 1990), reprinted in *International Legal Materials* Vol. 29, No. 5 (September 1990): 1306. See also S. Guk, "From Vancouver to Vladivostok: Uniform Criteria are Drawn Up for Human Rights and Basic Freedoms," *Izvestia,* 9 July 1990, 5, in *Current Digest of the Soviet Press* Vol. XLII, No. 27 (8 August 1990). (Excerpts from an interview with V.F. Petrovsky, USSR Deputy Minister of Foreign Affairs). Nationality and minority rights will be addressed at the July 1991 meeting in Geneva. "Blueprint for a New Era; Edited Extracts from the Charter of Paris," *The Independent,* 22 November 1990, 10.
59. Alexander Lyuty, "Don't Dictate Trade," *Pravda,* 11 February 1989, 5, in *Current Digest of the Soviet Press* Vol. XLI, No. 6 (8 March 1989): 23.
60. A 1989 *Pravda* article on the film "Secrets of the Third Basket" stressed that "every people chooses its own model of society and works to improve it. . . . We are now creating a state based on the rule of law and eliminating distortions in the area of human rights, not because someone told us to but because of an inner, organic need and because we are striving to reveal socialism's full democratic potential. We criticize ourselves not to please some uncle, in this case Uncle Sam, but rather to heal ourselves." Alexander Lyuty, "Secrets of the Third Basket," *Pravda,* 9 October 1989, 5, in *Current Digest of the Soviet Press,* Vol. XLI, No. 41 (9 November 1988): 18.
61. In an article in *Pravda* in February of 1989, V. Bolshakov argued, for example, that "[t]he fact that the international dialogue on human rights has now become more constructive and fruitful can largely be explained by the fact that in the period since April 1985 the Soviet Union has placed this question among its top-priority foreign policy concerns. *We began with putting our own house in order.* Now that the most

Thus, the domestic pattern of reform is paralleled by Soviet foreign policy attitudes toward human rights. Soviet foreign policy has been the most successful area of restructuring because it is the area over which the Soviet leadership has the most direct control. Yet, foreign factors have also influenced the policy decisions. The leadership's new concern with human rights has been a major factor in reversing the 1985 credibility crisis of Soviet foreign relations. The foreign policy successes in turn buttressed domestic democratization and appear to have increased the influence that the Foreign Ministry has over domestic implementation of human rights. For example, the Political Bureau of the Communist Party's Central Committee recommended that the Foreign Ministry coordinate the efforts of the Soviet ministries to assure the implementation of the accords approved at the Vienna CSCE meeting.[62] This suggests that foreign policymakers reinforce and may even instigate domestic change.

The new human rights policy clearly has a pragmatic side as well. Many of the human rights changes facilitated the realization of other foreign policy goals. The Soviet Union has learned how to convert the human rights issue from a liability to an asset, thereby simultaneously achieving several goals, including improving US-USSR relations; increasing the credibility of *perestroika* in the West; removing human rights as the achilles heel of Soviet foreign policy; and creating a new image for the USSR abroad. Soviet foreign policy, however, has not yet succeeded in removing the US legal restrictions linking emigration and trade, and if the crackdown on the republics continues, these barriers will stay in place. To date the West has monitored human rights in the Soviet Union primarily through statistics concerning emigration (mainly of Soviet Jews), information on political prisoners released, and rates of family reunification. Now the focus must shift to the remaining problems and especially to the institutionalization of the rule of law.

Security Factors

Until recently security considerations, which used to be the primary rationalization to deny emigration or to undertake domestic repression, have hardly raised their head during the current debate. This is due to the ideological changes in the concept of security and a reassessment of the nature of the threats facing the USSR. Therefore restricting human rights on the basis of external security concerns now has been deemed unnecessary. An important

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odious cases and names have disappeared from the West's "sacred list" of "human rights violations in the USSR," and as the democratization of life in the USSR acquires legal sanction and our legislation is gradually brought into conformity with the international pacts and conventions we have signed, the Geneva [sessions of the UN Commission on Human Rights] have finally managed to move to a more concrete discussion on broadening humanitarian cooperation." V. Bolshakov, "In the Name of Man," *Pravda,* 23 February 1989, 4, in *Current Digest of the Soviet Press,* Vol. XLI, No. 8 (22 March 1989): 17 (emphasis added).

62. USSR Foreign Ministry, "The Foreign Policy and Diplomatic Activity of the USSR," *International Affairs* (Moscow) No. 1 (January 1990): 41.

factor is the new military attitude toward secrecy. The military has accepted (or been forced to accept) on-site inspection of military facilities as part of arms control agreements, parliamentary control, and other limits on its autonomy.[63] Moreover, the armed forces, cognizant of the relationship between a modern military and its domestic economic base, support *perestroika* out of concern over the state of the economy and recognize the need to increase the Soviet Union's technological capacity.

At present, however, the major potential barriers to further change are internal security and domestic political considerations, and not external factors. Here the military is likely to play a more assertive role. Most notably, the military and some members of the political leadership are worried about chaos in the form of civil unrest, ethnic conflict, mass desertions from the army, and loss of central control over the periphery. The question is, at what point does the military leadership align with reactionary elements to stop a secessionist movement, quell domestic unrest, or halt massive flows of people?

Remaining Problems

Any subversion of the democratization process would represent a setback for human rights in the USSR. The vulnerability of the reform process is highlighted in the current struggle for control between the central and republican governments. Several events, including Shevardnadze's resignation in December of 1990 and the military intervention in the Baltics in January 1991, seemed to signal a reversal of the political climate. Many analysts in both the USSR and the West fear that anti-reform elements have recently gained the upper hand as a result of Gorbachev's increasing difficulties in managing the republics' aspirations for autonomy and outright independence. The primary dilemma facing the Soviet leadership today is how to maintain national unity. For the purposes of this paper, the key issue is the manner in which this struggle to maintain the union will affect the Soviet Union's new commitment to human rights. At first glance, it appears that the leadership may be willing to sacrifice human rights in order to achieve this essential political goal. Yet, the role of human rights in maintaining the union is more complex. Four possible scenarios seem to exist for the Soviet Union in the near future, each of which would have different ramifications for human rights.

As Bill Keller of *The New York Times* has written, the most feared possibility is a return to the full-fledged tyranny of the past, but the best assurance against this is "that the Soviet Union is already not what it was when Mr. Gorbachev began."[64] The two options most favored by the independently-minded republics are either full independence for the republics or some form of a renewed federation. In the former, the Soviet Union per se would cease to exist; in the latter, the republics would retain substantial autonomy over

63. Concrete evidence of the new security approach is illustrated by the completion of the 1987 INF treaty and the 1990 CFE treaty; see also Woodby, 15.

64. Bill Keller, "In Soviet Life, Thaw Becomes Chill," *The New York Times*, 3 February 1991, 12.

their economies, population, and politics, while relegating only national defense and a few other issues to Moscow. At present the Soviet leadership appears unwilling to countenance either of these two options. If pressures for independence overwhelm the center's capability for control, then a key concern will be whether the Soviet leadership allows the transition to occur peacefully as it did in Eastern Europe, or whether the country will dissolve into chaos and civil war.

The fourth possibility is probably Gorbachev's preferred solution; however, given the extent of discontent in the republics its feasibility is questionable. Gorbachev hopes to maintain the existing structure of the Soviet federation. For example, he has stated that "there is no reason to call into question the decision that was made concerning the entry of the Baltic republics into the USSR, or the choice that was made by their peoples."[65] While willing to accept a certain amount of republican autonomy, he appears determined to preserve a strong center. In this option, the promotion of human rights stands at the center of his policy, for support of human rights provides both a source of legitimacy for the government and advances the political goal of integration. For if the emphasis is on universal human rights, and the central government serves as the guarantor of those rights, then national or ethnic identity is irrelevant to the protection of citizens' rights.[66] This approach is illustrated in the wording of the March 17, 1991, national referendum which asked the citizens:

> Do you consider it necessary to keep the Soviet Union united . . . as a renewed federation of equal sovereign republics where human rights and the freedom of any nationality will be fully guaranteed?[67]

The difficulties for Gorbachev in pursuing human rights as the foundation of the new union are similar to those which he has encountered in his efforts to reform the Soviet economy—a policy is not credible if pursued only halfway. The government cannot simultaneously claim to be the guarantor of human rights and ignore them when politically expedient. Gorbachev learned this lesson in the aftermath of the Baltic intervention, for the intervention created widespread domestic and foreign condemnation which led to the eventual withdrawal of Soviet black beret troops.

Conclusions

Modifying its stance on human rights was one of the few options available to the Soviet Union in 1985 to improve its international credibility and foster a favorable international climate for *perestroika*. Soviet progress in guaranteeing

65. "On the Party's Nationalities Policy Under Present Day-Conditions," *Pravda*, 20 September 1989, 2–3, in *Current Digest of the Soviet Press* Vol. XLI, No. 38 (18 October 1989): 5. (Report by Gorbachev at the CPSU Central Committee Plenary Session.)

66. Gail W. Lapidus, "Gorbachev and the 'National Question': Restructuring the Soviet Federation," *Soviet Economy* Vol. 5, No. 3 (1989): 235.

67. "Soviet Republics Backdown," *The Economist*, 2 February 1991, 46.

human rights was thus both a precondition to, and a beneficiary of, domestic reform and new thinking in foreign policy.[68] The ideological changes of 1987 and 1988 allowed legal rights in the domestic sphere to catch up with de facto freedoms.

Soviet foreign policy goals regarding human rights have almost all been achieved. From 1985 to 1990, Gorbachev essentially turned the tables on the West and created a positive public relations image of Soviet human rights policies. In fact, the West, notably the United States, was forced to reevaluate its policy of pressing the Soviet Union to allow freer emigration.[69] The United States has shifted from a combative policy toward the Soviet Union to one of constructive criticism, and the UN oversight bodies have gone to great lengths to praise the USSR. The Soviet human rights situation has improved and, therefore, the Soviet Union deserves the praise. However, serious concerns exist over the reversibility of the reform process. While it is clear that domestic factors are behind the political will for change, domestic human rights are not firmly enough entrenched or institutionalized to withstand a withdrawal of political support.

The Soviet Union remains sensitive to external criticism of its human rights practices, and it wishes to maintain the economic benefits of international cooperation. In spite of the initial improvements, the recent negative developments and the inadequate degree of institutionalization present the West with a new policy challenge. Now that the USSR has met the West's demands, it is important that the West reevaluate its policies and target new areas for change. Yet, Western nations must also resist downplaying human rights issues as soon as the West's concerns are met. The former approach undermines the reformers, while the latter is harmful to human rights constituencies within the Soviet Union. Throughout the process, it will remain important to differentiate changes in form as opposed to substance.

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68. Juviler, 145.

69. The United States stopped processing Soviet refugees *outside* the country—which is the norm in any refugee situation—and is now only accepting applications in Moscow. This procedure is more akin to a normal immigration program than refugee processing.