

THE SOVIET VIEW ON INTERNATIONAL LAW

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The background of Marxist-Leninist theory with which Soviet international law began permitted, and indeed required, an analysis of the contemporary nation-state system from without. So long as a Soviet analyst could in thought remain outside the system, he found not much difficulty with the conundrum that has troubled so much of the writing about international law since the fictions of medieval universality broke down; that is, the problem to which you addressed yourselves yesterday afternoon, of the efficacy and even the existence of international law in the absence of a single compelling enforcement machinery. That problem has seemed especially acute to Western scholars under the influence of what they thought to be the implications of Austinian positivism. It was taken care of in early Soviet terms by a theory of the organization of society which refused to look on states as the ultimate aggregates of legitimized power. Instead it emphasized the controlling role of the bourgeoisie, a class that was supposed to overlie all society, regardless of political boundaries, in those parts of the world which had attained industrial civilization. We must remember that one of the reasons for calling upon the proletarians of the world to unite was that it was assumed that for many purposes the bourgeoisie of the world were already united.

International law in a bourgeois setting, so the theory ran, was sanctioned by the transverse power of the global bourgeoisie up to the point where imperialistic conflict, caused by the growing contradictions of capitalist society and capitalist economics, was expected to lead to a breakdown of the system and open the way for a proletarian revolution and the establishment of socialism. Under this analysis, international law is trivial until the moment it becomes obsolete.

Before and for some time after its occurrence, the Russian revolution was expected to touch off a continuing series of revolutions in the more industrial countries of, at least, continental Europe. As Taracouzio put it:

With . . . the advent of a single world-wide denationalized, classless society, there [would] be no place for a system of law regulating the international life of independent states. International law [would] be converted into a purely domestic inter-Soviet law, a federal law for a world-wide union of Soviet Socialist Republics.

It was no accident—to use a favorite Soviet phrase that is typically redundant, for under the philosophy of dialectical materialism it never is an accident—that the name given to the new federation at the time of its official

formation at the end of 1922 contained no geographically limiting term. "Union of Soviet Socialist Republics," while the word Soviet betrays its Russian origin, is in principle capable of expansion without incongruity to embrace any territory on earth, or beyond.

Events in the first five years after the 1917 Revolution required a modification of these perspectives. The revolution did not spread to all of Europe, though there were brief episodes in Germany and Hungary. Conflicts on the perimeter of the former Russian Empire with national and anti-Bolshevist forces along the Baltic coast, in Poland, and in the Caucasus led to temporary independence for some and to inclusion within the federation for others. Foreign intervention in Russia by some fourteen states from 1917 to 1922, aimed first mainly at supporting the forces continuing the war against Germany, later at safeguarding lives and property of foreigners and (in a confused and ineffectual way) assisting the efforts of anti-Bolshevist armies, may have helped to teach the Bolshevik publicists gradually that national boundaries can be ignored in more than one direction and that territorial integrity has its uses.

The stabilization of the international situation in the early twenties included on the Soviet side a partial settling-down to statehood. For strategic reasons it proved necessary to coexist temporarily with other states that remained opposed to the Bolshevik revolution; for economic reasons it was necessary for the young, ravaged, and very poor Soviet state to establish commercial relations abroad. True, Lenin and his successors have presented the case as though the economic necessity constrained not the Soviet Union but the outside world; but that was a common turn of Soviet, particularly Leninist, argumentation that did not affect the substance.

In this state of affairs, Soviet Russia

necessarily became a part of the international community that its leaders analyzed and assailed. Unable thenceforth to denounce all existing rules and processes of international law, the Soviet writers appealed openly to expediency as the principle of selection. As a Soviet writer remarked at the time:

The situation became rather ambiguous. On the one hand, Soviet Russia openly and loudly declared its denunciation of all treaties inherited from Tsarism and the Government of Kerensky, of all secret conventions, military debts, privileges of exploitation and imperialist obligations, and on the other, its official representative often demanded the execution of minor agreements, referring to the fact that beneath the text were affixed the seal and the signature of the Imperial [Tsarist] Ambassador.

As the strategic retreat of the New Economic Policy in 1921-1928 required some limited encouragement for foreign technicians and supply contracts, it was discovered that even the dictates of expediency can lead in different directions for the short term and the long; in the longer-term interest of the Soviet Union it was thought to be expedient to display—and here the etymology is intentionally convergent—the status and stability of a state. Thus we saw the development, in the mid-twenties, of "The International Law of the Transitional Period," in which an attempt was made to reconcile the millennial perspectives of pre-Revolutionary Marxist-Leninist theory with the contemporary coexistence of the Soviet Union and surrounding, or encircling states. At this time, the attitude of the Soviet Union to the traditional norms of international law was said by the conciliatory wing of Soviet international jurists to be what we might call consistently inconsistent, in the sense that the Soviet Union took what it liked and rejected what it did

not like in conformity to its general policies. Thus the Soviet Union was said to "exclude" such notions as extraterritoriality, special concessionary privileges, and mandates; the Soviet Union "selected," meaning chose to accept, such institutions at consular and diplomatic immunities; the Soviet Union "interpreted" other doctrines of international law as its interests dictated.

The differentiated attitude toward traditional doctrines of international law assured the conformity of doctrine to current foreign policy. It also, however, presupposed an awkward concession on what in the martial Soviet terminology was known as the theoretical front. Here you must, for a minute or two, wander with me through the thicket of Marxist dialectic. It had been accepted teaching that social institutions, including law, must belong either to the base or to the superstructure. The base included preeminently the relationships of production. Between base and superstructure was a causal connection, operating preponderantly in one direction: the base determined the superstructure, though it was at times conceded that in some respects the superstructure might have a back-influence on the base. But if anything was central to the Soviet Marxist catechism, it was that the base, in the Soviet Union, differed fundamentally from the base in the countries of capitalism. That served as a convenient polemical framework in the Soviet comparative analysis of internal legal systems; but it seemed to imply that the same international law could not exist for the Soviet Union as for "bourgeois" countries. The dilemma was that if international law belonged to the superstructure, states with different bases could not be acknowledged to agree upon international rules so long as it remained dogma that base determines superstructure; but if one assigned international law to the base, then one denied the primacy of productive relationships and called into question the

uniqueness of Soviet society which was so important for the self-image and the propaganda of the new leadership.

If this problem had arisen in the early 1950's, when some of the foundations of Marxism-Leninism were being revisited, it could have been swept under by a stronger assertion of the superstructure's partial independence of the base. As it was, in the 1920's it was necessary to resort to two other explanations. The first of these was the compromise formula, which most Soviet definitions of international law have included since, to the effect that international law is the complex of norms that regulate relations between states in the process of their *struggle and collaboration*, or *conflict and cooperation*, and so on. The second, which is a feature of the Stalin period, rests on the distinction familiar to us and found in many corners of Soviet thought between form and content; just as a given internal legal, economic, or social institution can be bourgeois in form but Socialist in content, so differing bases can infuse a verbally identic form in international law with different content. A similar problem encountered later, after the Second World War, in characterizing the relations between countries in the Soviet camp, was met by the distinction between letter and spirit; the rules that were obeyed only in the letter by bourgeois countries were infused with a different spirit when applied between friendly socialist countries.

During the 1920's and 1930's the Soviet Union carried on treaty relations, entered into international supply contracts, conducted exchanges of goods, took part in certain international organizations, and lived an international life, though at a level of activity far below that of the West. The more powerful Hitler became, the more traditional Soviet international law became.

After the Second World War, the Soviet Union came to play a leading role in world politics. The Soviet attitudes

toward the structure of international politics have undergone certain changes, and the distribution of emphasis in Soviet international law is correspondingly being modified. The process was submerged for a while in the suppression of foreign contacts that accompanied the purges of the late nineteen forties and early fifties, but there is considerable evidence that it had begun well before Stalin's death. The chief factors in the process seem to have included, beside the temporary power vacuum in Europe and the emergence of a loosely bipolar confrontation, the increasing inability to tolerate high risks of large-scale war after the development of nuclear weapons, particularly after the development of the hydrogen bomb; the emergence of new nations from the passing of the old colonialism in Africa and Asia; and the coming to power in neighboring countries of regimes called socialist and prepared, on the whole, to act in accord with Soviet moves in the international arena.

In Soviet foreign policy these factors led to the peace campaigns, in new form; the support for "national-liberation movements" even at the cost of temporary eclipse for local communist parties; the grant of a substantial amount of foreign aid, deployed of course for political effect, but often useful, nevertheless; and the renewal of the campaign for general and complete disarmament. (By the way, for those of you who might otherwise be inclined to date the Soviet campaign for general and complete disarmament from the Khrushchev period, it would be instructive to consider the judgment made by George Grafton Wilson that:

One of the most striking features of Soviet policy has been advocacy of complete disarmament, land, maritime and aerial, in contrast to the policy of most states, which have favored varying degrees of mere limitation of armament.

The striking thing about that quotation is that it was published twenty-eight years ago.)

At present the Soviet Union is one of the most active participants in international relations and a prominent actor in the stages of international law. Though the Soviet Union is absent from some important international organizations, it is present and active in many, and some of these are closely concerned with problems of international law. It has sent judges to the International Court of Justice; it takes part in the work of the International Law Commission; its representatives make legal arguments in many bodies of the United Nations; it sends delegations to nongovernmental bodies like the International Law Association and the International Association of Legal Sciences; its scholars produce yearbooks of international law, textbooks on international law (one of which was published in English translation not long ago), and numerous monographs and articles; it is party to scores of bilateral and multilateral agreements, not all limited to the Soviet camp; its agents conclude many foreign trade agreements, providing for arbitration in Moscow before a vigorous, and, we are told, reasonably fair arbitration commission.

This activity is enough to provide some evidence of the characteristics of Soviet utterances in international law. I should say the chief characteristics, aside from the current emphasis upon the principle of coexistence (to which I shall return), are that contemporary Soviet utterances in international law are predominantly *official, moralistic, projective, offensive, and underdeveloped*. These traits are not wholly absent from Western work in international law, but the differences of degree are great. As someone has said, the difference between a difference in kind and a difference in degree is in itself only a difference in degree.

By *official* I mean that Soviet work

in international law supports current Soviet foreign policy with unremitting fidelity. Current Soviet foreign policy is always defended as legal; even past Soviet foreign policy is defended as legal though the policies may have been abandoned. Never is there a public statement by a Soviet private jurist calling into question the action of the Soviet government. To put it shortly, every Soviet writer on international law is on active duty. Variations do not often exist, and when they do they tend to be either on subjects of slight current practical importance, or on the question of which reason is to be preferred for supporting the legality of given Soviet behavior or the illegality of given behavior of an adversary. Thus every utterance from a Soviet source on international law must be taken as "interested," that is, the source must be considered. This fact need not always tell against the intellectual quality of what they write; in this country, lawyers' briefs often make impressive contributions to the thinking of the judges to whom they are directed, but they are recognized nonetheless as briefs.

Soviet argument on questions of international law is easy and cogent once you grant the invariant major premise that the Soviet Union is right. From this premise, combined with the minor premise describing in tendentious terms whatever the Soviet Government has done or advocated in a particular case is right.

If this judgment seems harsh to you, consider the following typical illustration. A respected Soviet international jurist discusses the relations between states within the Soviet orbit when faced with internal law on the one hand and international law on the other:

In the practice of the Soviet Union and the People's Democracies, conflicts between the norms of international law and the norms of internal law are impossible. The socialist states,

strictly observing international law, cannot either impose or accept any of its norms that would contradict the principles of internal law of the contracting states. On the other hand, strictly observing international agreements, they cannot utter any norms of internal law that would contradict their international obligations.

Again, on the right of asylum, a statement is made that convinces only one who is already committed to the major premise:

The right of asylum is formally acknowledged by all states as a current principle of international law. In the USSR and the countries of People's Democracy it is available to progressives. . . . Asylum in socialist countries is not afforded to diversionists, terrorists and others of that ilk. In many capitalist countries, the representatives of leading and progressive mankind are in fact deprived of asylum, which, however, is widely afforded to all sorts of diversionists, terrorists and traitors who have committed grave crimes against their homelands.

In final illustration of this official characteristic I should like to correct the statement made yesterday, referring to violations of treaty by the Soviet Government. This is contradicted by the following information furnished by the authoritative current Soviet textbook on international law, which reports:

The Soviet Union, like the other socialist countries, stands for the strict observance of obligations assumed under international agreements, as has been demonstrated by the entire history of Soviet foreign relations. . . . The Soviet Union's strict fulfillment of its obligations under the U.N. Charter and other international

treaties clearly demonstrates the Soviet Union's adherence to one of the basic principles of international law—the principle *pacta sunt servanda*.

The imperialist states frequently refuse to fulfill their obligations, and make international treaties mere scraps of paper. But it must not be concluded from this that international treaty links are unstable. There are now strong social and political forces opposing arbitrary action.

Perhaps at the time when yesterday's speaker mentioned Soviet treaty violations he did not have present in his mind the major premise that the Soviet Union does not violate treaties.

Soviet international law is official, then. It also is *moralistic*. In international law, as in domestic law and some other areas of culture, Soviet thinking has undergone a transformation since the days when the Revolution was young. The very values and principles and even rules that used to be derided as bourgeois are now not merely accepted but expropriated. No longer is the Soviet Union presented as the bearer of a supermorality, transcending the hypocritical and outworn morality of the bourgeois past; now it is the Soviet Union that has inherited the obligations that used to be borne by the bourgeoisie in the days of its vigor. A Soviet scholar mentions as one category of "generally recognized principles of international law":

principles and concepts that entered into international law during the struggle of the bourgeoisie with feudalism under the influence of the democratic and national-liberation movement. They above all define basic rights and duties of states in international relations, and then guarantees of the rights of the population and various other sides of interna-

tional life. Such are the principles of sovereignty and equal rights of states, non-intervention . . . inviolability of state territory, the institutions of citizenship, plebiscite, rights of asylum for political emigrants, etc. These democratic principles and institutions, which reflected in their time the demands of the broad masses who took part in bourgeois revolutions and national-liberation movements, were taken up and raised to a new height by the Soviet Union and other socialist states.

The same moralistic tone can be observed in the Soviet espousal of disarmament, now about to be proclaimed not merely a policy, but also an existing principle of international law. Expediency is (officially) shuffled; morality is trumpeted.

Official, moralistic, *projective*. I use the term *projective* in the sense in which psychologists use it when speaking of the tendency to attribute to others the ideas and intentions that one must deny in one's self. For example, it is common to meet in Soviet work condemnation of the United States for concluding agreements "involving unequal rights" as with the Marshall Plan—which, as you will remember, the Soviet Union kept some Central European satellites from joining when they wished to. For another example, I heard a Soviet scholar in Moscow insist to some colleagues planning a work on disarmament that they must expose the Western practice, which he said was to advocate disarmament not merely hypocritically and without intending to disarm, but precisely in order to lull the Soviet Union and other peace-loving states into a dangerous reduction of their armed strength. For a final example, when Soviet publicists a couple of years ago stepped up their campaign against published American discussion of orbiting space weapons, it was fairly clear that the Soviet Union was well on the way to

a decision to develop those weapons.

Official, moralistic, projective, *offensive*. This term is used in the military sense. Soviet work in international law is predominantly polemical, and the polemics are based on the theory that the best defense is a good offense, like the theories held by the French general staff before the First World War or the old management of the Boston Red Sox. Thus the condemnation by the United Nations of the use of Soviet tanks and troops to suppress the Hungarian revolution in 1956 is referred to by a Soviet scholar of international law in this way:

The Soviet Union and other socialist states spoke out decisively against the efforts of the U.S.A. and its partners to make use of the United Nations Organization as an instrument of intervention in the internal affairs of the Hungarian People's Republic after the counterrevolutionary rebellion, inspired by foreign reaction, had been crushed in November 1956.

The same observation of offensiveness can be made of the continuing Soviet emphasis upon outlawry of aggression, or the combination of high military expenditures with high volume of disarmament campaigning, or the criticism of the American "voting machine" in the United Nations to draw fire away from the Soviet veto. You may not all be familiar with the old story of the visitor to Moscow who, on being shown a new subway station, admired the decoration but after a while asked his host why there weren't any trains, and was answered, "And what about the lynching of negroes in your Southern states?" (Correspondingly, it is no answer to Soviet criticism of U.S. racial discrimination to say that the Soviets have a housing shortage or even that they have racial discrimination.)

My last epithet was that present-day Soviet international law was *under-*

developed. In one sense it is underdeveloped in that it seems designed to win the support and the votes of the underdeveloped nations, or, as we are now calling them in an effort to seem less condescending, the new or newly developing nations. The analysis of international law, the choice of emphasis, the thrust of the moralizing, is calculated to appeal to ex-colonial countries and other suffering from the present fact or the recollection of Western domination. The attitudes that seemed to suit the Soviet Union in the days of its weakness are found appropriately transferable to those countries, and the gulf between (say) Mali or Bolivia and the Soviet Union of today is ignored. There are still gains to be made by playing the role of the underdog.

In another sense, Soviet international law today is *intellectually* underdeveloped. When I looked in yesterday on Professor Sohn's class I heard him say that, if you look at Soviet work in international law and deleted the obeisances to Lenin and the criticism of the imperialists, what you would have left would be something like our own work in international law, only not as good. He attributed this to restrictions on access to Western literature and Western jurists. He did not, as I understood him—nor do I—make any reflections on the personal abilities of Soviet jurists. He might have added that in international law activity, as in many other respects, Soviet society today has points in common with the Western world of two or three generations ago, not with the Western world of today or (let us hope) with the Western world of, say, 1984. The improvement in the quality of the work of the newer generation of Soviet jurists is welcome but still minor. Soviet international law, far from being the wave of the future, is intellectually a stagnant pool left over from the past.

Professor Lissitzyn once put it more kindly when he wrote of their technical conservatism. Many rules are stated and

restated without criticism or reflection. Soviet doctrine on the *sources* of law follows older practice, as you know, in exalting treaties and depreciating custom. Soviet doctrine on the supposed conflict between internal law and international law comes down—except for relations between states in what is misleadingly called the socialist camp—on the side of the primacy of internal law. You heard yesterday of the rapid growth of legal doctrine on the continental shelf from the time of President Truman's proclamation in 1945 to the Geneva Conference on the Law of the Sea in 1958; but before that the Soviet publicists had poured scorn on the idea that the rights of a coastal state to resources on the continental shelf were becoming recognized in international law. As one of them said:

Thus a unilateral declaration proclaiming the seizure of open sea belonging to all and making it one's own property is turned into a norm of international law with the naked use of the machinery of the "legalization" of seizures, [the Americans declare, the satellites "follow," "scholarship" recognizes—and behold, a norm is born!].

Technical conservatism does not mean that the Soviet Union is satisfied with the present state of generally accepted international law. Usually they cannot directly admit dissatisfaction without denying to the norms with which they disagree the dignity of being called existing rules of international law; and they can play as many games as we can with the *lex lata* and the *tex ferenda*, which may be rudely translated as calling the rule that helps you the law that is, and calling the rule that helps the other man the law that he wishes were the law. But they have other devices too. To look at those devices in perspective, let us return to their theme of peaceful coexistence.

Peaceful Coexistence. In some

pronouncements of Soviet authorities, the principle of peaceful coexistence has been said to be not merely the basis of the Soviet view of international law, but the basis of all international law today, and not merely the basis, but the key, or the core, of all international law. It is even said that international law today has become the law of peaceful coexistence. So important a concept deserves our attention.

At the outset we are not to confuse "Peaceful Coexistence," in quotation marks and with initial capitals, with peaceful coexistence in the literal sense of the term. For example, it is clear that the term in Soviet usage does not mean condemnation of all war. Wars that serve the ends of Soviet foreign policy are given the label of wars of national liberation or revolutionary civil wars and are accepted as just.

It is fairly clear also that the term in Soviet usage does not connote relationships of trust, friendship, agreement, or free communication between the peoples of the "peacefully coexisting" states. A striking confirmation of the freedom of maneuver left to the Soviet Union by the principle of peaceful coexistence was noticed last year by some close readers of the Soviet press. On January 30, 1962, Suslov, the chief Soviet Marxist theoretician (next to Chairman Khrushchev), made a speech at a conference of Soviet university teachers in the social sciences. His speech was published in *Pravda* on February 4th. According to that report, he said:

Peaceful coexistence means the coexistence of states with different social systems. It means the rejection of war, the settlement of disputes between states through negotiations. It means the refusal to violate the territorial integrity of states, the refusal to export revolution and export counter-revolution. Finally, peaceful coexistence is economic rivalry of

states, agreements, trading relations on the basis of mutual advantage between states.

Notice the *refusal to export revolution and export counterrevolution*.

Thirteen days later the same speech was published again in the chief theoretical magazine, *Kommunist*, here Suslov was made to say:

Peaceful coexistence means . . . the refusal to violate the territorial integrity of states, the inadmissibility of the export of counterrevolution. . . .

The reference to the refusal to export revolution had now been deleted, apparently at the last minute from galley proof or page proof; the key sentence in *Kommunist* is very widely spaced to make up for the deletion.

Peaceful coexistence in the sphere of ideology has been repudiated by the Soviet leadership in many statements, directed principally at the Soviet population to make sure they do not get any wrong idea. That the idea, though not the precise words, of "peaceful coexistence" was used as a tactic in foreign policy, was made clear in the earlier and more candid days of the Soviet regime when Lenin said, in a letter to his representative at the Genoa Conference of 1922:

. . . we, communists, have our own communist program [Third International]; nevertheless we consider it our duty as merchants to support [even if there is only 1/10,000 chance] the pacifists in the other, *i.e.*, bourgeois camp. . . It will be both biting and "amicable" and will help to demoralize the enemy. With such tactics we will win even if Genoa fails.

As recently as early 1961, Chairman Khrushchev referred to the policy of peaceful coexistence as "a form of intensive economic, political and ideological struggle of the proletariat against the aggressive forces of im-

perialism in the international arena." The current Program of the Communist Party uses similar language.

Thus the fact that the considerable resources of scholarly and lay communication at the disposal of the Soviet leaders are directed toward the celebration of the importance of "Peaceful Coexistence" says nothing necessarily about the probable foreign policy of the Soviet Union.

The term, as such, has been found in Soviet literature bearing as early a date as 1920. Though contemporary Soviet writing invariably describes the principle of peaceful coexistence as Leninist, by the way, the term does not seem to have been used by Lenin. It was Chicherin, People's Commissar for Foreign Affairs, who referred to the Peace Treaty with Estonia as the "first experiment in peaceful coexistence with bourgeois states." Twenty years later, as we know, the state of Estonia ceased to exist and it became unnecessary to coexist with her, except in the sense that the robin, in Don Marquis's old poem, coexisted with the worm it had swallowed.

While peaceful coexistence was often mentioned by Stalin, especially during the period of the United Front in the thirties and the period of wartime collaboration in the early forties, it is only since 1956 that the slogan has become central to Soviet pronouncements. At that time it took off from the Panch Sheela, the Five Principles, which had been proclaimed in the Sino-Indian pact of 1954 and expanded in the Bandung Declaration of 1955. Later the major share of the credit was ascribed more directly to Lenin. As a principle in international law, it has been treated in numerous Soviet monographs and articles since 1956 and pressed vigorously by Soviet representatives at international meetings of governmental and nongovernmental organizations.

To distinguish between the political and the legal purposes of the Soviet emphasis on "Peaceful Coexistence"

implies a distinction between law and policy that is not made by the Soviets, except for external consumption; but we can distinguish between general strategic purposes and technical doctrinal purposes.

The strategic uses of "Peaceful Coexistence" vary with the audience. Afro-Asian audiences in general are assured that the Soviet Union sides with them in their campaigns for the Panch Sheela and, more basically, that the Soviet Union as an important European power takes seriously a form of words that the Afro-Asians profess to take seriously. With other non-Soviet audiences, except for Communist Party members or sympathizers, the aim is to influence non-Soviet disarmament, to attract East-West trade, and to enlist support for various specific Soviet moves in foreign affairs from time to time. With communist audiences, the declaration of adherence to the policy of peaceful coexistence is a taking of sides on one of the main issues between the Chinese and Soviet communist leadership, which may be defined as the issue whether the expansion of the communist system can be rapidly achieved without actions that increase the risk of worldwide nuclear war. Recently, before a Soviet audience, some Soviet international lawyers took pains to distinguish

the concept of peaceful coexistence, as the fundamental principle of international law which is also the basis of the foreign policy of peace-loving states [from] . . . the concept of coexistence [note the absence of the adjective] of the two systems as an indication of the stage of history referred to by V.I. Lenin, a stage which is inevitable by virtue of the fact that the socialist revolution does not triumph simultaneously in all countries.

The fact that all these various audiences eavesdrop on one another has complicated the task of Soviet propagandists,

but they are assisted by the durable propensity of us all to hear what we wish to hear and close our ears to what we would rather not hear.

For some of these purposes, the content of the principle has to be spelled out, though not in great detail. A minimum statement would include the Panch Sheela: these five points refer to respect for sovereignty, nonaggression, nonintervention in the internal affairs of other states, respect for equality of states, and peaceful coexistence itself, which in Afro-Asian usage is one of the five points, but in Soviet usage embraces all the others. Under pressure from international diplomatic and legal questioning, some additional content, still at a high level of abstraction, has been given to the principle of peaceful coexistence; it has been said to include, for example, in Dr. Lapenna's convenient summary:

1. Coexistence is "a fundamental principle of international law."

2. Peace without threat or use of force; settling disputes by peaceful means; individual or collective measures, in accordance with the United Nations Charter, to prevent or suppress acts of aggression; prevention or suppression of war propaganda; promotion of the implementation of general and complete disarmament.

3. Cooperation in the field of economy, social and political questions, science and culture.

4. Sovereignty and territorial integrity; the right of peoples and nations to self-determination; anticolonialism.

5. Noninterference in the internal affairs of other states.

6. Equality of states; representation of states in international organizations in conformity with the interest of the three groups of states. This is a promoting of the Troika idea to the rank of a principle of coexistence.

7. Fulfillment in good faith of international obligations arising from treaties and other sources of international law.

On the whole, it is fair to say that the Soviet publicists have not shown themselves jealous for the purity of their principle; they have seemed willing provisionally to accept many of the formulations offered by others as components of the principle. The reason for this hospitality is, I think, the same as the reason for the failure hitherto to specify what Professor McWhinney calls concrete secondary principles, that is, principles sufficiently meaningful to be arguable. To make clear what I believe this reason to be, we should back up far enough to look at the position of the Soviet Union in the international legal community and at some of the other techniques advanced by the Soviet Union in the past to improve that position.

The Soviet Union began under conditions that implicitly denied the validity of traditional international law as the regulating idea of the traditional system of nation-states. Upon coming into the international community the Soviet Union was very much in a minority. Even today, though it is stronger, and has several satellites and many friends in power and out of power throughout the world, the Soviet Union both feels itself to be in a minority still and finds it useful for certain purposes of morals and ideology to emphasize, at times, that it is beleaguered by a hostile majority. To the extent that the international community was a going concern, Soviet views were alien and Soviet policies were distrusted. Not only were

the doctrines of international law in many respects disagreeable or hampering from the Soviet point of view, but the processes by which international legal doctrine was made and applied seemed, under Soviet analysis, to be necessarily exclusive and anti-Soviet. The facts indeed lent some support to this opinion.

In such a situation, Soviet international law theory, whatever its twists in accompaniment to the course of Soviet foreign relations, made use of a variety of techniques to depreciate the existing process of international norm-formation and to enlarge the role to be reserved for the Soviet Union in those processes. There was the time when international law was generally repudiated, later to be accepted during a period of transition admitted to be necessary before international law could be discarded along with the system of independent nation-states. There was the assertion that a state whose polity was based upon a new and juster social theory had the right and duty to repudiate those particular doctrines of international law that offended that theory. There was the continued insistence upon the primacy of treaties as sources of international law, the belittling of the rule of custom, the stress upon the necessity of the consent of a state before that state could be bound by a rule. When the United Nations Charter was adopted, with its institutional arrangements allowing a very important role to the Soviet Union, and its text corresponding in many ways to the demands upon which Soviet representatives had insisted. Soviet publicists began to exalt what was called the international law of the Charter over what was called traditional international law. For some time it looked as though primary stress was to be laid by Soviet international law theorists upon the institution known throughout the world as "generally recognized principles of law," or "the general principles of law recognized by civilized nations."

While I have listed these techniques roughly in the chronological order of their appearance, it should be kept in mind that there was no neat sequence of use, abandonment, replacement. Many of them are alive today, though not flourishing. They all have been overshadowed, even if not quite superseded, by the emphasis upon the principle of peaceful coexistence. What counts, for this purpose, is not that the principle shall mean anything special rather than anything else, or indeed that it shall mean anything at all. What counts is that something under the name of "the Principles of Peaceful Coexistence" should win recognition—without definition, preferably—as lying at the heart of international law; that it should be acknowledged the world over that to define "the Principles of Peaceful Coexistence" is the most urgent task of contemporary international law; that it should be acknowledged that the process of defining them requires the participation and consent of the Soviet Union; and by implication, that any principle or doctrine of international law that has not been accepted by the Soviet Union as part of, or consistent with, "the Principles of Peaceful Coexistence" has to be rejected as being for that reason invalid.

There, in my opinion, we have the chief significance of "the Principles of Peaceful Coexistence" in contemporary Soviet work on international law. There, too, we have the explanation for the hospitality of the Soviet publicists toward so many of the items furnished on provisional lists of principles of peaceful coexistence by Yugoslavia, Americans, Canadians, and others. They are hospitable because at the present stage of their campaign the content of "Peaceful Coexistence" does not matter for their main purpose. There will be arguments about the content, but those can expediently be postponed until a later stage when the centrality of the (undefined) "Principles" has been

conceded by the rest of the world. To this end, many particular questions of content can be sacrificed for the time being if the sacrifice will purchase agreement to the procedural claim, to the essential idea that their notion of peaceful coexistence is central to international law. At the Brussels meeting of the International Law Association a year ago, for instance, the Soviet delegation, led by the most eminent currently authoritative Soviet international lawyer, were willing to admit a good many topics to the list of issues discussable under the heading of "Principles of Peaceful Coexistence;" but when an attempt was made to change the name of the pertinent committee to drop the slogan of peaceful coexistence and bring the title into line with that used in the United Nations, the Soviet delegation quit work in the committee until the change of name was blocked. Their attachment to the name was not an attachment to the fact described by the name, or to the content they had been suggesting for the name, but a recognition of the utility of the slogan in serving other goals than this one and of the energy that, having been invested in its dissemination in international law circles, would be wasted in part if it had to be transferred to a new set of words.

In drawing this picture of the international law uses of the Soviet emphasis upon "Peaceful Coexistence," I may have overrationalized the mental processes of Soviet lawyers, who may well not have planned it all at once. And I have no intention of asserting that the engine they have tried to build will roll along the planned route, or even that the route cannot change. The Yugoslavs and the Communist Chinese know how wide the swings can be.

Such are the main features of Soviet work in international law as they seem to strike the observer today. Have we any warrant for expecting them to alter soon? In some directions we may be justified in supposing the changes in the

global situation of the Soviet regime to do their work in affecting Soviet international law. For example, the strong emphasis placed by Soviet doctrine on territorial sovereignty may be affected by several contemporary developments: First, the Soviet Union is acquiring power, influence, and attendant responsibilities in areas not contiguous to the Soviet Union, and the map on which they, the Soviet leaders, plan their political moves, looks a little more like a globe than it did in Stalin's time. Second, trade and aid, while still minute by our standards, are beginning to play a more significant role than before in Soviet economy and in Soviet foreign policy. Third, the Soviet Union is becoming more active in impinging upon other states in ways that are within the purview of international law, not least in their deployment of naval and ostensibly civilian vessels. (When Admiral Mott, by the way, spoke of the reciprocal interest in innocent passage, I was reminded of an old Russian proverb with a liquid setting and perhaps a naval application: "Don't spit in the well: you may want to drink from it later.")

These factors are opposed, and perhaps still for a time will be outweighed, by the weight of history and training, the continued situation of the Soviet Union as a huge land power potentially threatened by action by sea and air, the continuing political advantage to be derived among nations of the Southern Hemisphere by espousing extreme concepts of sovereignty, the Soviet Union's perception of its minority status in most international fora, and the continued interest of the Soviet regime in restricting the access of its population to outside influence and the access of outside influences to its population.

We should not therefore be surprised to see inconsistencies, hitches, conflicts of emphasis. Proclamations closing large areas of ocean to foreign fisheries, or enclosing large bays, and advocacy of a wide margin to the territorial sea, may

peacefully coexist with considerable sophistication in the use of Soviet fishing trawlers for not necessarily innocent passage; attacks upon the legality of United States reconnaissance satellites may be made in the same breath, or speech, with assertions of the right of the Soviet Union to make military use of space. Efforts to achieve a special theoretical position for legal relations among the states of the Soviet camp will be combined with bitter resistance to regional groupings over which they have no control; they are still uneasy with a horizontal system, no matter whether the several units of that system are single states or groups of states. The mixture will be spiced with that self-righteousness in which the Soviet authorities have had so much experience and defended by the enforced unanimity of the legal profession—unfortunately they don't have a Quincy Wright of their own—but it will bear some resemblance to the complex and many-shaded relationship that other great powers have toward international law.

This is not, except by indirection, a class on American work in international law, and I shall not proffer detailed comment or advice upon the course we might take in reaction to, or consideration of, or disregard of, the Soviet work. My attitude toward desirable American policy is perhaps best expressed obliquely by a reference to the best defense ever given, as it seems to me, for Chairman Khrushchev's famous boast, "We will bury you." As you know, he has had many times to insist that the statement was meant only figuratively, that it was not meant to refer to particular individuals, that it was compatible with peaceful coexistence, that it has been misunderstood. But the best answer on Khrushchev's behalf was made for him more than twenty years *before* Khrushchev's statement. In 1936, at the tercentenary of the founding of Harvard College, President Conant moved that the meeting be

adjourned to the same day of the year 2036. Ex-President Abbott Lawrence Lowell intervened with a comment beginning with the words with which I should like to close:

Before putting that motion [of adjournment] I want to say a

word in its favor. If I read history aright human institutions have rarely been killed while they retain vitality. They commit suicide or die from lack of vigor, and then the adversary comes and buries them. . . .

