

SOVIET INTERPRETATION AND APPLICATION OF INTERNATIONAL LAW

Oliver J. Lissitzyn

When some five years after the Russian Revolution an attempt was being made at a conference at the Hague to settle some of the issues between the Soviets and the Western European countries, and arbitration was suggested, Litvinov, the Soviet representative, was reported to have said:

Commander Hilton Young had asked whether it would be impossible to find a single impartial judge in the whole world. It was necessary to face the fact that there was not one world but two—a Soviet world and a non-Soviet world. Because there was no third world to arbitrate, he anticipated difficulties... The division he had mentioned existed, and with it existed a bias and a hatred, for which the Russian Government must decline the responsibility. Only an angel could be unbiased in judging Russian affairs...

This statement reflects one aspect of Communist ideology which has colored the Soviet attitude toward international law—the concept of two worlds between which there is hatred—the Soviet and the non-Soviet. In the Soviet Union, ideology has been closely related to policy. Let us look at the Soviet ideology and its implications for international law.

The Communists profess to interpret history in terms of the class struggle. On one side are the exploiters, the capitalists, those who own the means of production. On the other side are the toilers, the proletariat, those through whose labor the exploiters make profits for themselves. These two classes are antagonistic in their interests, and, consequently, hostile to each other. In their struggle, no holds are barred. In the capitalist states, government, law, religion and morality are all weapons by which the capitalists protect their property interests and keep the workers in subjection. But, the Communists say, historical development inexorably dooms capitalism. Beset by its own inner contradictions, capitalism is bound to be overthrown by the workers in a not too distant future. The Russian Revolution, in which the workers for the first time in history succeeded in overthrowing capitalistic rule, marks the beginning of the end. When the workers are finally victorious everywhere, they will completely destroy the capitalist system of government, law and morality. Eventually there will be a world commonwealth of labor in which government and law will become unnecessary and fade away, since there will no longer be any antagonistic classes struggling with each other. But before this comes to pass, there is

bound to be a period of transition, a period of struggle, since capitalism will not willingly give way to Communism. During this period, the workers, wherever they are victorious, as in Russia, will set up a dictatorship of the proletariat to crush capitalist resistance; they will seize and use the machinery of government in their own interests.

In its struggle against capitalism, the proletariat must not be handicapped by moral scruples. Lenin said that at this stage of history morality "is completely subordinated to the interests of the class struggle of the proletariat." Recent Soviet writings leave little doubt that the advancement of Communism still remains the supreme criterion of morality in Soviet ideology. Hatred of the class enemy—of capitalists as a class—continues to be regarded as one of the components of Soviet morality.

Law is regarded by the Communists as an instrument by which the ruling class imposes its will on the community. Vyshinsky, for instance, has defined law as "the sum total of rules of conduct expressing the will of the ruling class" which are enforced "in order to protect, consolidate and develop such social relations and institutions as are advantageous and agreeable to the ruling class." In a United Nations debate in 1948, he said that law is nothing but an instrument of policy; that law and policy cannot be contrasted.

The law of a state ruled by the capitalists is bound to be quite different from the law of a state such as the Soviet Union, in which the will of the workers prevails. One is an instrument of capitalist policy; the other an instrument of the anti-capitalist policy of the working class. The Communists profess to find support for their conception of law in the actual practices of capitalist governments; they claim that law is cynically manipulated by capitalists to suit their own purposes.

At this point, I should admit that my presentation of Communist philosophy

has been sketchy and oversimplified. I think, however, that I have presented enough of the basic ideas to draw the necessary implications. Let us look at the matter from the standpoint of a Communist who takes his ideology seriously.

First, there is no room for any genuine and lasting community of interest between the Communist and the non-Communist worlds, since there is bound to be implacable hostility between them. This does not mean, of course, that there will be open warfare all the time; but the periods of relaxation are merely uneasy truces. Neither side can truly reconcile itself to the continuing successful existence of the other. If a genuine community interest among nations is to be regarded as one of the foundations of international law, this foundation would seem to be lacking in the relations between the Communist and the non-Communist states.

Second, the period of transition—that is, the period of coexistence of the Communist and non-Communist worlds—is bound to be a limited one. It will end in a not too distant future with the complete triumph of Communism. This means that Communists have little reason to attach much value to the long-range advantages of the observance of international law in good faith. If expectations of stability and permanence are one of the foundations of international law, this foundation, too, would seem to be lacking in the relations between the Communist and the non-Communist worlds.

Third, since Communists reject capitalist morality and are told that the advancement of Communism is the supreme moral imperative, morality in the traditional sense plays little or no part in Communist ideology as a basis for the observance of international law.

Furthermore, law is for the Communists nothing but an instrument of the policy of the ruling class. In its modern form, international law has grown up

among capitalist states; it must, therefore, be an instrument of capitalist policies. Why should a state controlled by a class hostile to capitalism have anything to do with it? Indeed, if law always expresses the will of a ruling class and is enforced by it in its own interest, how can there be any law in the relations between states ruled by different and mutually hostile classes? The will of which of these classes would it express? Or, is each of the classes to apply international law only to the extent and in the way that suits its own interests and policies?

It is clear that the Communist conception of law as an instrument of policy makes for a highly practical and flexible approach. Rules of law are not absolutes that must be obeyed regardless of consequences; they cannot control policy; they are merely the means of producing desired results and should be interpreted and applied accordingly.

It might be expected that since international law was difficult to fit into Communist ideology it would be declared nonexistent, unreal. Far from it. Soviet writers, with official blessing, unanimously uphold the reality of international law. They refer to it as an attribute of culture and civilization, and as an essential condition of modern international relations. Those in the West who deny or doubt the reality of international law are attacked as nihilists. Soviet leaders from time to time call for more study of international law. International law is often invoked in official Soviet documents and speeches. In short, the Soviets profess to recognize international law and even to lay stress on it. The philosophical difficulties of fitting international law into the Communist scheme of things have not been completely resolved; they still trouble Soviet writers; but they are not permitted to stand in the way of professed acceptance of international law by the Soviet State.

This acceptance, however, is not

complete. For example, Kojevnikov, a leading Soviet jurist who is now the Soviet judge on the International Court of Justice, wrote in 1948:

Those institutions in international law which can facilitate the execution of the stated tasks of the USSR are recognized and applied by the USSR, and those institutions which conflict in any manner with these purposes are rejected by the USSR.

Yet Soviet writers, generally speaking, are cold to the idea that there are two completely distinct bodies of international law, one Soviet and the other capitalist. In this sense, there is no special Soviet international law. What it boils down to is that the Soviets accept international law to the extent that it suits their purposes. Indeed, the Soviet leaders are in a somewhat difficult position. On the one hand, they want to use international law to serve their own purposes. For this reason, they must admit its reality and even try to build it up. On the other hand, they do not want international law to be used against them. The Soviet position is, therefore, ambiguous and highly flexible. Vyshinsky has defined international law as "the sum total of the norms regulating relations between states in the process of their struggle and cooperation, expressing the will of the ruling classes of these states and secured by coercion exercised by states individually or collectively." Note that "struggle" is put ahead of "cooperation."

What are the Soviet needs served by international law? Let us take our cue from Vyshinsky's reference to struggle and cooperation—in that order.

After a very brief initial period of confident expectation that the workers of the rest of the world would follow the Russian example and put an end to capitalism right away, the Soviet leaders realized that the Soviet and the non-Soviet worlds would coexist for some

time to come. The Soviet State found itself in what they call "the capitalist encirclement." The capitalist world was, for the time being, stronger than the Soviet world. There was little or no open warfare between the two—except in part for World War II—but there was a continuing struggle, a struggle for the minds of men, and an expectation of greater struggles to come. The Soviet world, being the weaker of the two, needed time—time to strengthen itself and to weaken the opposition. Under these conditions, the Soviet leaders turned to international law. Weak as it was, it had enough appeal, enough power to influence people, to be a useful instrument of Soviet policy.

First and foremost in the minds of the Soviet leaders was the danger of intervention from abroad against the weak Soviet State. Such intervention, in fact, did take place in the first few years after the Revolution when civil war still raged in Russia. Although the Soviet regime survived, any repetition might be disastrous. Moreover, the Soviet political and economic system was so different from the capitalist system that the Soviet leaders saw danger in any tendency for the capitalist states to have a voice in how the Soviet system should be run. Naturally enough, the Soviets appealed to the time-honored principles of sovereignty, nonintervention and equality of states. These principles would help them run their own country without outside interference, and, despite their weakness, hold themselves equal to any other state in the world. The Soviets also emphasized their opposition to forcible annexation of foreign territory.

The principles of sovereignty and nonintervention continue to serve the purposes of the Soviet policy to this day. For example, when the United States recently brought up for discussion the problem of the Soviet satellites in Europe, the Russians said that such discussion would amount to inter-

vention in the affairs of sovereign states. The principle of nonintervention has been appealed to again and again—for example, during the Spanish Civil War, to mobilize public opinion against the German and Italian help to Franco; and, more recently, in denunciations of the help given by the United States to the foes of Communism in China, Korea, Guatemala and other countries.

The need of the Soviet leaders to protect themselves against capitalist interference is also reflected in various corollaries of the principle of sovereignty. For example, the Soviets like to stress treaties rather than custom as the chief source of international law. A treaty is not binding on them unless they choose to ratify or otherwise accept it, while a custom—which may have been formed long before the Russian Revolution—might be held binding on the Soviet Union even if it did not manifest its acceptance. Similarly, the Soviets take a generally negative attitude toward any device whereby any decision binding on them could be made without their specific consent. They oppose all proposals to give any international organization the power to make decisions on any matter of importance by a majority vote, unless they retain a veto power, as in the United Nations Security Council. As suggested by the quotation from Litvinov, with which I opened my talk, the Soviets are skeptical of the value of arbitration in the settlement of their disputes with other states, although in all fairness it must be pointed out that they offered to arbitrate two disputes with the British in 1923 and 1924, and that the offer was ignored. Although the Soviet Union is a party to the Statute of the International Court of Justice, and a Soviet national is one of the judges, the Soviets have not agreed to accept the compulsory jurisdiction of the Court under Article 36 of the Statute and have invariably declined all offers to submit their disputes with other countries to the Court. In fact,

they take pains to attach to multilateral treaties to which they are parties reservations against the submission of disputes arising under those treaties to the International Court. The specific reasons for this attitude are not hard to find. True to their conception of law, the Soviets do not regard the Court as standing above politics, but rather as a body in which the interests of the capitalist states—from which most of the judges come—are bound to prevail. Soviet writers, in fact, do not hesitate to impute political motives to the judges, and often speak of an Anglo-American majority on the Court. In short, the Soviets are generally not willing to submit themselves to majority or third-party decisions lest such decisions be used by the capitalists to the detriment of the Soviet State.

Basically, for the same reason, the Soviets oppose proposals to give to individuals any effective rights in international law. Soviet writers, in fact, refuse to recognize individuals as subjects of international law. If individuals had such standing, the capitalist states would have a pretext for interfering with the control which the Soviet leaders exercise over their own people.

The Soviets like to exercise their territorial sovereignty with as few restrictions as possible. They deny, for instance, that foreign warships have a right of innocent passage through territorial waters—a point still unsettled in the West—and refuse to enter into any general agreements permitting foreign aircraft to fly over Soviet territory.

Another international law principle which the Soviets have stressed as a means of self-protection is the principle of nonaggression. Before World War II, the Soviet Union negotiated a number of treaties with neighboring states defining and forbidding aggression. In the League of Nations, the Soviet representatives were loud in their denunciations of the aggressions committed by the Japanese, the Italians, and the Germans,

and in the protestations of the peaceful intentions of the Soviet Union. This policy produced considerable goodwill for the Soviets in the democratic countries at that time. Since World War II, the Soviets have participated in the trials of the major German and Japanese war criminals, and have been recently insisting on the adoption by the United Nations of a definition of *aggression*.

The interest of the Soviet leaders in the protective function of international law is also reflected in the laws of war. Two distinctive Soviet positions may be mentioned here: (1) the Soviet espousal of the lawfulness of guerrilla warfare behind the lines, and (2) the denunciation of weapons of mass destruction such as atom bombs and germ warfare. So far as guerrilla warfare is concerned, the Soviets appear to be conscious of its usefulness in case of a foreign invasion of the Soviet Union, which was in fact demonstrated in World War II, as well as in civil wars and anticolonial revolts in other countries. We all know the success with which the Communists have used guerrillas in China, Vietnam, and other places. The Soviet writers maintain that guerrillas are lawful belligerents, apparently drawing the conclusion that they are entitled to be treated as prisoners of war. The Soviet denunciations of the weapons of mass destruction may be attributed in part to consciousness of the fact that at this time the use of such weapons would not be to the advantage of the Soviet Union and its allies, but they also serve an important propaganda purpose. These denunciations appeal powerfully to the natural revulsion of people everywhere against such horrible weapons as the H-bombs and disease germs, and, particularly, to the weaker or more exposed countries.

This brings me to another point. The Soviets use the slogans of international law only to help prevent measures which threaten their own security or freedom from outside interference.

They use them to stir up resentment against their opponents and to attract support. We all recall the great propaganda campaign against the alleged American resort to bacteriological warfare in Korea. The principles of sovereignty, nonintervention and equality of states have been constantly invoked by Soviet spokesmen and propagandists in their attacks against the United States. For example, the Marshall Plan, NATO, and American bases abroad have all been denounced as violations of the principles of sovereignty and equality, and as devices through which the United States interferes in the affairs of other states. Furthermore, Soviet writers and spokesmen invoke the principle of self-determination as if it were an accepted principle of international law to stir up colonial and minority peoples against their rulers—and, in so doing, undoubtedly gain the sympathy of many such peoples. The laws of war are appealed to in denunciations of alleged atrocities by troops fighting against the Communists, as in Korea. The use of international law slogans as a psychological weapon became particularly intense at the height of the cold war, during the conflict in Korea. Since the death of Stalin and the end of the Korean conflict the tone of Soviet propaganda has moderated, but international law is still drawn upon heavily.

You may ask whether the espousal by the Soviets of such principles as sovereignty, nonintervention, nonaggression and self-determination does not hamper the Soviets themselves in the achievement of their aims. But it is clear that the Soviets, who regard international law as an instrument of policy and who recognize it because it suits their purposes, would not let it stand in the way of achievement of important policy aims. Soviet officials, it is true, never openly deny that international law exists or that it is binding on the Soviet Union. There are several ways, however, of preventing international law

from interfering with Soviet policy. One way, as I have already indicated, is to reject explicitly certain of the rules as unacceptable to the Soviet State and to insist on certain new rules. There are other, and probably more effective, ways. Many of the rules of international law are vague and uncertain, leaving much room for interpretation. Not infrequently there are contradictory precedents and authorities to choose from. As Professor Hazard says, "Soviet authors and statesmen pick and choose among the precedents to meet their needs, and they do so quite openly." The Soviet approach to international law, it must be repeated, is very flexible. Kojevnikov, in his 1948 book, emphasizes that international law must not be interpreted in an "abstract dogmatic" fashion. In fact, the principles the Soviets profess to espouse do not deter them from pursuing policies in apparent conflict with these principles. The principle of nonintervention, for example, has not prevented the Soviets from giving aid to subversive movements and Communist guerrillas abroad. Or, take the matter of nonaggression. As I have already pointed out, the Soviets profess to be unalterably opposed to aggression; they make nonaggression pacts; they are also said to oppose annexations and to favor self-determination. When the time came, however, this did not stop them from taking aggressive action against their neighbors, such as Poland, the Baltic States and Finland, with all of whom they had nonaggression pacts.

The principle of nonaggression, furthermore, should be compared with the definition of just and unjust wars laid down in 1938 by Stalin himself and faithfully repeated by Soviet writers. Listen carefully to this definition: "Just wars—wars that are not wars of conquest but wars of liberation, waged to defend the people from foreign attack and from attempts to enslave them, *or to liberate the people from capitalist slavery*, or, lastly, *to liberate colonies*

and dependent countries from the yoke of imperialism, and Unjust wars—wars of conquest, waged to conquer and enslave foreign countries and foreign nations.” It is hardly open to doubt that this Stalinist doctrine of just war will be used to justify any war the Soviet leaders choose to wage. Furthermore, there are indications in Soviet literature that only those who are fighting a so-called just war will be regarded as entitled to the full benefits of the laws of war. For instance, guerrilla warfare seems to be regarded as lawful only when waged as part of a just war. This is an important point to remember. In fact, the doctrine of just war may be the key to the full understanding of the Soviet conception of international law. It takes us back to the Communist conception of morality. Only he who wages a *just* war, or a *just* struggle, has any rights. And the Communists regard their struggle against capitalism—whether or not it takes the form of open war—as just. Therefore, anything goes in the struggle against capitalism.

Soviet spokesmen and writers never tire of proclaiming that the Soviet Union faithfully observes all treaties concluded by it on a basis of freedom, equality and reciprocity. That the Soviets do attach some importance to the observance of treaties would seem to be indicated by the fact that they frequently take pains to protect legally their freedom of action on particular points by making express reservations. In other words, the Soviet leaders prefer to avoid situations in which their treaty obligations might come in obvious conflict with their policies. It has also been noted that the more specific and clear the treaty obligation is, the less room there is for divergent interpretations—the less likely are the Soviets to violate it. Yet, the record of observance by the Soviets of their treaty obligations, particularly in matters of political importance, has not been such as to inspire general confidence. Even allowing for

reasonable differences in interpretation and for the uncertainty of the rules of international law concerning termination of treaties, the behavior of the Soviet Union has given the impression that its promises are not to be trusted. I have already referred to the nonaggression pacts which did not prevent the Soviets from invading or coercing certain of its neighbors. Certainly the failure to withdraw troops from Iran after the end of hostilities in World War II was a clear violation of a treaty obligation. The Soviets have failed to keep many promises not to support subversive activities abroad. The United States felt compelled to protest in 1935 against the Soviet violation of such a promise less than two years after it had been given. Soviet behavior in Eastern and Central Europe after World War II has been generally regarded in the West as not in conformity with the agreements at Yalta and Potsdam. Many other examples could be given.

There is still another device which helps the Soviet Union to get around international law and which cannot be left out of any realistic account of Soviet behavior. This device is misrepresentation of the facts. This seems to be the standard device, for example, in justifying the Soviet role in border incidents. It is always the American or other foreign airplane that invades Soviet territory and starts shooting. And you may recall the Soviet version of how the conflict in Korea started in 1950—it was the South Koreans who attacked first. This device is also frequently used when the Soviets are charged with promoting subversion abroad. The facts are simply denied.

So far, I have talked primarily of the use of international law in Soviet policy as a weapon in the struggle against the so-called capitalist encirclement. The picture is not encouraging. You will recall that Vyshinsky in his definition of international law mentioned cooperation as well as struggle. The Soviet

leaders recognize that a period of co-existence with the capitalist encirclement may last for some time to come. During this period of relatively peaceful relations it may be, and often has been, to the advantage of the Soviet State to cooperate with the capitalist states for various purposes. In fact, the building up of the economic and military power of the Soviet State, particularly in the early days, required commercial and other economic relations with the outside world, and the avoidance of excessive friction which might lead to open warfare. Participation in international organizations of political, as well as technical, character has also been deemed necessary in the interests of the Soviet State. Finally, on occasion the Soviet State found itself allied with some capitalist states against common enemies, as was the case during World War II. International law has been recognized by the Soviet leaders as a useful device for the facilitation of peaceful and cooperative relations with the outside world when Soviet policy calls for them.

As a matter of fact, there has been a considerable measure of routine observance of international law by the Soviets. For example, aside from certain claims to territorial waters, about which I shall speak later, the Soviets have by and large respected the principle of the freedom of the seas. Despite occasional incidents involving foreign diplomatic personnel in Moscow, the Soviets have observed the generally recognized rules of diplomatic relations with most capitalist states. Before World War II, thousands of foreign technicians worked in the Soviet Union, helping to develop Soviet industry. Again, with some exceptions, the Soviets treated these foreigners in accordance with recognized international standards. The Soviet record of observance of nonpolitical commitments—for example, commercial agreements and technical arrangements—has been appreciably better than

their record with respect to political treaties, such as nonaggression pacts. During World War II, the Soviets generally honored their strictly military commitments to their allies. All of this indicates that the Soviet Union is perfectly capable of observing international law when its leaders believe it to be in their interest.

Yet, it must be noted that Soviet writers have on occasion stated that cooperation with the capitalist world is itself a form of struggle.

At this point, I should like to mention some distinctive factors other than Communist ideology that enter into the Soviet interpretation and application of international law.

First, the nature of the Soviet political and economic system. This system, to be sure, is in large part an outgrowth of Soviet ideology; but, once established, it acquired a life of its own and its own needs which may persist even if the ideology is changed or no longer taken seriously.

One of the features of the Soviet system is the totalitarian control of the population by the government. This control, for full effectiveness, requires a limitation on the contacts of the Soviet population with the outside world; it requires a monopoly of the information which is allowed to reach the people. This is an important source of the restrictions placed on the travel of Soviet citizens abroad and of foreigners in the Soviet Union, as well as such devices as the jamming of foreign broadcasts. It also accounts in part for the refusal to recognize individuals as having rights in international law, and the reluctance of the Soviets to enter into any agreement whereby they would be required to permit free entry to foreign nationals or officials. It has possibly entered into the Soviet coolness toward disarmament control plans which involve wide travel in the Soviet Union by foreign inspectors. The totalitarian controls and the restrictions on contacts

with foreigners tend to distort even the information available to the leaders themselves; they prevent full understanding of the reactions to Soviet policies abroad; and they interfere with the development of any nonofficial consensus between Soviet citizens and foreigners even on the professional level of international law. The complete governmental control of all economic activity, particularly that involving foreign trade and shipping, means the absence of private economic interest groups which in the West have had a lot to do with the development and enforcement of certain international law standards and institutions. All of this tends to set the Soviets apart from the main stream of world thinking and feeling, and accentuates the peculiarities of the Soviet approach to international law.

The Soviet state monopoly of foreign trade and shipping has, indeed, direct effects on the Soviet interpretation of international law. Since all Soviet trade is conducted by government agencies, the Soviets steadfastly uphold the traditional principle that governments and their property are immune from the jurisdiction of foreign courts even when engaged in ordinary commercial activities abroad. This principle is being increasingly questioned and modified in the non-Soviet world. The Soviets also insist that their trade representatives abroad are entitled to diplomatic immunities. As suggested by Professor Hazard, this may have other than a commercial objective, since immunity facilitates espionage and subversive activities; nevertheless, a number of European and other non-Soviet states have agreed to accord immunity to such representatives, since Soviet foreign trade is a state monopoly, and foreigners, if they want to do business with the Soviets, have no choice but to deal with official Soviet agencies.

Another distinctive factor is the geographical position of the Soviet Union. Russia has always been primarily a land

power. Its maritime power has been handicapped by the absence of good outlets on the open ocean and the fact that entrances to the seas bordering it are largely controlled by other nations. Naval power has more often figured in history as a means of attack on Russia rather than as an instrument of aggression on Russia's part. There are, furthermore, valuable fisheries off the coasts of Russia. All of this makes it natural for Russia to try to extend its territorial waters as far as possible through various devices, and to gain control of the entrances to the seas bordering it. A tendency to extend the Russian territorial waters to twelve miles, instead of the three miles favored by the major maritime powers, appeared already before the Revolution, although it was manifested in the form of claims of jurisdiction for customs and fishery control rather than in terms of outright sovereignty. The Soviets inherited and strengthened this tendency. Although Soviet statutes do not seem flatly to assert Soviet sovereignty in a zone twelve miles wide—speaking rather in terms of control for security and other purposes—there can be little doubt that the Soviet Union does claim today a 12-mile zone of territorial waters. In all fairness, it should be noted that this claim seems modest in comparison with the 200-mile claims recently made by some Latin American States. Nevertheless, it has been a cause of frequent controversies with other powers, including the United States, the United Kingdom, Japan and the Scandinavians. The Soviet Union maintains that each state may fix the width of its territorial waters in the light of all the attendant circumstances.

A further example of the tendency to extend Soviet territorial waters may be seen in the statements of Soviet writers that four seas bordering the Soviet Union on the north—the Kara, Laptev, East Siberian and Chukot (or Chukchi)—are in reality territorial bays;

that is, a part of Soviet inland waters, rather than high seas. There is a hint that the same principle may apply to the Sea of Okhotsk. As yet, there seems to have been no occasion on which the Soviet government made such claims officially. The White Sea, however, is definitely treated as a part of Soviet inland waters.

Another claim made by Soviet writers and apparently espoused by the government is that certain seas bordering Russia are closed seas, because they do not constitute waterways used for navigation other than that to and from the littoral states and, therefore, navigation on them is of concern only to the latter, which are entitled to regulate it in their own interests even to the point of forbidding access to outsiders. This concept of the closed seas, which should be distinguished from that of territorial waters, is novel in modern international law. The Black Sea and the Baltic Sea, as well as the landlocked Caspian Sea, are regarded by Soviet writers as closed seas. Recent reports indicate that the Soviet Union has proposed to Japan that the Sea of Japan should be declared a closed sea, on which navigation by warships of outside powers would not be allowed. The Sea of Okhotsk, if not claimed by the Soviets as a territorial bay, might also be regarded as a closed area.

As yet, the Soviet concept of the closed sea does not seem to have had much practical effect. Russia, however, has always been interested in the control of the Turkish Straits leading to the Black Sea. Although the Soviets are a party to the Montreux Convention of 1936 on the Regime of the Turkish Straits, they have not been entirely satisfied with it, since it does not completely bar the Black Sea to the warships of outside powers and places some restrictions on the passage of warships of the Black Sea powers, entrusting Turkey with the enforcement of its provisions. The Soviet Union

would like to amend the convention to remove these objectionable features. It would also like to control the Straits itself. At present, three of the four Black Sea powers—the Soviet Union itself, Rumania and Bulgaria—belong to the Soviet block. Soviet proposals to give the control of the Straits and of the navigation of the Black Sea to the Black Sea powers would, therefore, give the Straits the preponderant influence.

Another consequence of Russia's geographical position is her espousal of the so-called sector principle in the Arctic. This principle, invoked by the Russian government before the Revolution, would permit Russia to claim all the islands in the Arctic Ocean up to the North Pole, including those not yet discovered or possessed, within the limits of a sector—like a slice of a pie—defined by the meridians at the two opposite extremities of the Russian territory bordering on the Arctic. Canada also favors the sector principle, although it has maintained it less bluntly. You can easily see why both Russia and Canada are in favor of it. Although the sector principle cannot be said to have obtained general recognition, the Soviet Union does in fact control virtually all of the islands claimed by it. Since there seems to be no additional land to be discovered, the sector principle has ceased to be much of an issue so far as lands in the Arctic are concerned. There has been a tentative suggestion in the Soviet literature, however, that the sector principle should be extended to cover not only land but water and the air space as well, making the Arctic Ocean all the way to the Pole a part of Soviet territory. Some Soviet writers have also claimed ice fields within the sector. There is no definite indication as yet that the Soviet government is preparing to make such claims official.

Although the Soviets favor the sector principle in the Arctic, Soviet writers deny that it applies in the Antarctic, citing the differences in the geographical

situation. The Soviet Union has made no formal claims to any territory in the Antarctic, but has insisted that Russian discoveries in that region in 1819-1821 entitle it to a voice in any general settlement of the problem of the control of the Antarctic, and has protested against the claims of some other states.

Although the Soviet interest in the extension of territorial waters, the concept of the closed seas, the sector principle in the Arctic, and related matters, is largely determined by the geographical position of Russia, and is a traditional Russian interest not related to Communist dogma, it is heightened by the Soviet ideology of hostility to the outside world and the needs of totalitarian controls. The Soviet position on these matters is obviously related to the security of the Soviet State, living in a hostile environment, against any attack or interference from the outside. Should Soviet ideology be eliminated, it may be expected that any government of Russia will continue to favor the twelve-mile zone and the sector principle, but possibly with less vehemence.

Under what conditions may we expect the Soviet Union to observe international law? And what of the future?

Before attempting to suggest any answers to these questions, I should like to compare briefly the Soviet attitude toward international law with the attitudes in the non-Soviet world. This will give us a better perspective.

Many aspects of the Soviet attitude find a counterpart in the non-Soviet world. Surely it would be ridiculous to assert that in the non-Soviet world international law is observed with perfect regularity; that treaties are always kept; that expediency never enters into the interpretation and application of international law; that international law is never used for propaganda purposes; or that facts are never misrepresented. Indeed, there is a strain in Western

thought, going back at least to Machiavelli, which would make expediency the sole basis for the observance of international obligations. As you may recall, Machiavelli said that a prince should not honor his promises if it is to his disadvantage to do so. In more recent times, the same kind of attitude has given rise to the idea that *raison d'état*, necessity or self-preservation—often very broadly interpreted—justifies a state in doing anything. Furthermore, there is a school of thought in the West that advocates flexible interpretation and application of international law, pointing out that rules of law are not absolutes that have to be obeyed for their own sake; that they are means to some end, instruments of policy, and that they should be so interpreted and applied as best to achieve desirable results. In the absence of universal agreement on the values and goals to be served by the rules of law, this idea, meritorious though it may be in principle, often means that a decision-maker feels free to interpret international law flexibly to serve the purposes he happens to favor. There are also people who deny the reality of international law.

Am I trying to say there is *no* difference between the Soviet and the non-Soviet attitudes toward international law? Not at all; there are very important differences, but we should understand their nature and sources.

First of all, in the nontotalitarian West, side by side with the idea that the observance of law is a matter of expediency, there has always been another idea—that observance of the law is a moral obligation, that law and morality have objective validity, and that they lie at the very foundation of civilized existence. There is a tradition of respect for law that carries over into international affairs. The overall Western attitude toward international law is a composite, a blend in varying proportions, of these two principles—the principle of expediency and the principle of moral

obligation. Communist ideology, on the other hand, leaves no room for a feeling of moral obligation to observe the law when its observance is not expedient for the Soviet States. In fact, the very existence of objective and universally binding moral principles is denied. This difference is accentuated by the absence in most of the non-Soviet world of totalitarian controls and forced conformity to any single ideology. In the Soviet State, ideas contrary to those favored by the leaders cannot be publicly expressed; on the surface, Communist ideology, the ideology of expediency in international relations, reigns supreme.

Probably even more important is another difference. As I have previously indicated, Communist ideology means that the Soviet Union regards all of the non-Soviet states as basically its enemies. Peaceful cooperation is bound to be temporary and for limited purposes only. It is expected that eventually Communism will prevail over all its enemies and so-called peaceful coexistence will come to an end. It is this sense of basic hostility and the temporary nature of any accommodation that distinguishes most profoundly the underlying Soviet attitude toward international relations, including international law. Without it, incidentally, there would be less incentive for the Communists to reject universal, reciprocally binding, moral principles. In the non-Soviet world, no such feeling of ineluctable and lasting hostility normally enters into relations between different states. In fact, most of the states of the world have an expectation of friendly and lasting coexistence with most of the other states. This is often true even when they go to war with each other—the war is regarded as a temporary condition which does not necessarily mean undying hostility between the two nations. In the relations between non-Soviet states, therefore, even though expediency be the under-

lying principle, much greater value is apt to be put on reasonably faithful observance of international law as a condition of stability and orderly coexistence. The long-range value of good faith is apt to be better appreciated.

Differences between the Soviet and the non-Soviet economic systems are another factor. They reduce still further the element of a community of interest as a foundation of international law.

In the light of the foregoing, under what conditions can we expect the Soviets to observe international law?

The obvious answer is that the Soviets will observe international law when it is to their advantage to do so. The question, then, is *when* is it to their advantage? I have already given some partial answers to this question. Immediate advantages do flow to the Soviets from the observance of international law on their part in a variety of situations.

First of all, unless the Soviets are prepared to go to all-out war with the rest of the world, it is to their advantage to observe international law to the extent necessary to avoid excessive friction with other nations. Here is where the rules of territorial sovereignty, jurisdiction, freedom of the seas, treatment of aliens, and the like—as well as treaties dealing with these matters—come in. The Soviet Union normally does observe many of these rules.

Second, reciprocity and retaliation play a part in the observance of international law. To the extent that limited cooperation with non-Soviet countries is desired by the Soviet Union, it is likely to observe reasonably well the rules governing such cooperation. There is no guarantee, however, that a shift in Soviet policy may not at any time put an end to the Soviet interest in the observance of any of these rules. Fear of retaliation is another factor which may be expected to induce the Soviet Union to observe international law. This may be true, for instance, with regard to the laws of war.

Third, the Communist leaders are by no means unmindful of world public opinion—or of public opinion in the countries with which they want to deal. A striking confirmation of this fact can be seen in the recent agreement of the Bulgarian Communist government to pay damages for the shooting down of an Israeli airliner and to punish those responsible for it. Many observers have noted that the Soviets are less likely to violate a treaty if it is specific and unambiguous. This is another confirmation of the value of public opinion. The Soviets try to avoid committing clear violations which would shock public opinion.

These factors may be called the short-range advantages to the Soviets of the observance of international law. To the extent such factors work, international law does make a difference, even though we cannot rely on the Soviets carrying out their obligations in good faith. The treatment of the prisoners taken by the Communists in Korea, bad as it was, might have been even worse if there had been no international standards at all.

Communist ideology, as I have indicated, minimizes the long-range value of the observance of international law, since Communists do not believe in lasting coexistence between the Soviet and the non-Soviet worlds. Yet, it is not inconceivable that this may change. If Soviet leaders become convinced that the so-called capitalist world is here to stay, they may come to appreciate the advantages of stability and good faith. Such an evolution may be helped along by greater contacts with the outside world. In short, Soviet leaders may come to redefine their interests. Communist ideology will certainly hamper such a reappraisal of the Soviet position in the world; but it may not prove to be an insuperable obstacle. The doctrine of the implacable hostility of the two worlds may be reinterpreted or quietly given up as an effective guide to policy.

Perhaps it has already been given up in Yugoslavia by the Tito Communists. As Toynbee has pointed out, this has happened to the Moslem doctrine of the holy war against the infidels, which no longer stands in the way of peaceful relations between Moslem and Christian nations. Reinterpretation of ideology is not new in Communist history.

Indeed, although I have stressed ideology as an important factor in Soviet policy, the precise role of Soviet ideology has long been a subject of controversy in the West. Some observers are inclined to believe that ideology is an instrument rather than a determinant of Soviet policy. I happen to believe that ideology *has* exerted a substantial influence on Soviet policy. But it may not be the decisive factor. When we deal with human emotions and motivations, we are pretty much in the dark. The personality factor should not be discounted. Stalin ruled as a dictator for some twenty-five years, and Soviet policy could not but reflect his personality. We cannot tell as yet what influence ideology will have on the policies of the new generation of Soviet leaders now coming to power. Should the idea of lasting hostility between the two worlds be given up, fairly stable relations under international law may be established even if the principle of expediency continues to prevail, provided that the interests of the Soviet State are defined moderately and intelligently.

If there is any hope at all that the Soviet leaders, present or future, may develop a more constructive attitude toward international law, what policies of the non-Soviet world are likely to assist in this process?

First, the Soviets must be continually impressed with the strength and stability of the so-called capitalistic world. This means that we—i.e., the whole non-Soviet world, not just the United States—must not only remain strong militarily, but must have a rate of

economic development and general progress at least equal to that of the Soviet bloc. At the same time, we must continue to make it plain that we are men of peace and that we are *not* opposed to genuine peaceful co-existence with the Soviet bloc if the Soviet leaders make it possible. We should also try to break down the intellectual isolation of the Soviet countries by encouraging their contacts with the non-Soviet world.

Second, our agreements with the Soviet Union and its allies should be so designed that it will be to their own continuous advantage to keep them. Indeed, this is a good principle to be followed in all international negotiations. As Professor Briggs has well said, "the treaties most likely to be observed are those which recognize and develop within a legal framework a positive mutuality of interests." The making of such treaties obviously requires much wisdom and skill. It is also wise to make all agreements with the Soviets in writing, and as clear and specific as possible.

Third, it should be our normal policy

to interpret international law fairly and to apply it in good faith. Indeed, if the non-Soviet nations should cease to take international law seriously and get into the habit of manipulating it for immediate advantage, why should the Soviets behave differently? Such behavior will merely confirm their belief that law is an instrument of policy cynically used by the capitalists for their own gain. The only way to teach the Soviet leaders the value of international law is for us to practice it. If, by way of exception and for our self-preservation, we are compelled to depart from law, we should make it clear that the behavior of our adversaries leaves us no choice.

Fourth, we must react firmly and vigorously against all clear violations of international law to our detriment. International law itself provides for measures of retaliation and reprisal—not necessarily armed reprisals—against its violations. We should use all suitable means to prove that violations of international law do not pay; and that good faith does pay.

