

SOVIET ATTITUDES TOWARD INTERNATIONAL COOPERATION IN POLITICAL MATTERS REVISITED: THE CASE OF INCONSISTENT CONSISTENCY

*Josef Rohlik**

Almost everything has already been said about Soviet behavior on the international scene, Soviet attitudes toward international law, and the Brezhnev doctrine.¹ With or without the Brezhnev doctrine, such events as the invasion of Czechoslovakia in 1968 and the blatant coercion of Poland from the birth of Solidarity in 1980 to date are not surprising; in terms of the post World War II "real-politik" they are understandable. Soviet actions within the Soviet "socialist bloc" easily withstand the "cost-benefit" analysis. The Soviet view of parity of power is not limited to nuclear or conventional arms; it includes any advantages or disadvantages within the totality of relations between the superpowers. The Soviet Union has strived for a long time for the international recognition of the Soviet bloc as an entity. The goals of the Soviet initiatives on collective security in Europe and "peaceful coexistence,"² which culminated in the Helsinki Accords³ and the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the

*Professor of Law, St. Louis University.

¹ For a discussion of the history of Soviet attitudes toward intervention and other relevant concepts, see, e.g., Butler, *Soviet Attitudes Toward Intervention*, in *LAW & CIVIL WAR IN THE MODERN WORLD* 380 (E. Moore ed. 1974); Butler, *Introduction to G. TUNKIN, THEORY OF INTERNATIONAL LAW* at xiii (1974); Rostow, *Law and the Use of Force by States: The Brezhnev Doctrine*, 7 *YALE J. WORLD PUB. ORD.* 209 (1981). In editing his exposé at the Law Professor Workshop on Coping with Internal Conflicts: Dilemmas in International Law for publication in the proceedings of the Workshop, the author added footnotes only when he considered it absolutely necessary for a reader knowledgeable with the problems discussed.

² Originally a Czechoslovak initiative. See M. POTOCNÝ and S. MYSLIL, *LEGAL PRINCIPLES OF PEACEFUL CO-EXISTENCE* 10 (1969). The authors write: "The recognition of equality of the differing social systems has become an indivisible component of the overall realistic assessment of the structure and laws of development of the modern international community." *Id.* at 12.

³ BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, PUB. NO. 8826, *GENERAL FOREIGN POLICY SERIES* 298 (1975).

United Nations,⁴ respectively, must be viewed as having been partially successful, no matter what the ultimate text of the mentioned documents reveals. Public opinion in the West and elsewhere by and large has accepted both the existence of the Soviet bloc and Soviet behavior within the bloc as inevitable. Furthermore, the assertion of special power prerogatives within a sphere of influence is nothing new and is not limited, even in the post World War II era, to the Soviet Union.⁵ Thus, at least from the formalistic point of view, Soviet attitudes toward the bloc do not have the appearance of a rarity limited to the USSR alone. While the principle contained in article 2(4) of the United Nations Charter remains a noble goal, it is unlikely that the Soviet Union will abide by the law of the Charter within its sphere of influence before it adopts a principled and consistent attitude toward that law elsewhere.

The reference to "elsewhere" is, of course, a reference to Soviet actions in Afghanistan and actions by Cuba as a Soviet proxy in Angola, Ethiopia, Somalia, and others. In terms of Soviet attitudes, it serves no useful purpose to differentiate between Soviet armed intervention and Soviet attitudes toward armed intervention on one hand, and Soviet use of force or attitudes toward use of force, including aggression,⁶ on the other hand. If Soviet attitudes toward recent uses of force are taken into account, as in the case of the Falklands war and the Iran-Iraq war, what emerges is Soviet indifference toward legal solutions. The largely reactive role of the Soviet Union in the United Nations and international organizations⁷ and the nonchalance with which it ratified the International Covenants on Civil and Political Rights and on Economic, Social and

⁴ G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

⁵ In article 4(2) of the defunct Southeast Asia Collective Defense Treaty "the Parties shall consult immediately in order to agree on the measures which should be taken for the common defense" if "the sovereignty or political independence . . ." in the defined area "is threatened in any way other than by armed attack or is affected or threatened by any fact or situation . . ." Treaty for Southeast Asia Collective Defense, *done* Sept. 8, 1954, 6 U.S.T. 81, T.I.A.S. No. 3170, 209 U.N.T.S. 28. The Israeli intervention in Lebanon and the election of the Lebanese President friendly to Israel in August 1982 is a most recent case in point (this paper was edited in September 1982).

⁶ It is understood that it may be proper, and indeed useful, to differentiate between armed intervention and aggression, quite apart from such documents as the Definition of Aggression Resolution, G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 142, U.N. Doc. A/9631 (1974). As mentioned, it is believed that no such distinction is necessary in terms of the Soviet behavior, at least not within the confines of this paper.

⁷ Soviet participation in the decolonization process is a notable exception.

Cultural Rights⁸ and with which it accepted the "Friendly Relations" resolution⁹ in its totality suggest indifference toward not only international law, but also toward the international law making process. The ambivalent attitude of the Soviet Union toward the taking of American diplomatic hostages in Iran in 1979, as evidenced by the Soviet refusal to support effective steps to enforce old, well-established, and rarely violated rules of international law, makes it impossible to cling to the proposition that compliance with international law is seen by the Soviet Union as being in its self-interest or of significant long term value. The following paragraphs will attempt a cursory examination of some of the causes of this attitude and of the goal oriented technique implicit in the Brezhnev doctrine.

After some experiments of a jurisprudential nature in the 1920's, the Stalinist regime in the Soviet Union not only eliminated any political dissent, but also severely punished any deviation from the "single truth" promulgated by the center of power in Moscow. The policy making process, *i.e.*, the formulation of a consensus, has been limited to a small circle of people,¹⁰ and the policy decisions have often been motivated by purely political and ideological considerations, especially by the perceived need to suppress any "leftist" or "rightist" deviations from the official line.¹¹ The governing of the Soviet society has been achieved through the transmittal of orders to and their blind execution by the middle and the local functionaries of the Communist Party. While rare popular pressures may account for certain decisions by the power center, undoubtedly there has never been practiced in the Soviet Union any institutionalized policy or decision making process which included bodies constitutionally or otherwise publicly designated to participate in such a process such as the plenary sessions of the Communist Party Committees and of the Soviets (legislatures) on all levels. For over sixty years, the Soviet society, a very closed society

⁸ G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966).

⁹ Declaration on Friendly Relations, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

¹⁰ The unanimous voting in the Plenary sessions of the Central Committee of the Communist Party, in the Supreme Soviet as well as in local Soviets, provides an overt example.

¹¹ The tragic end of Soviet legal theorists Pashukanis and Stuchka provided an unmistakable signal of the limits of independence of thought in legal theory. Even in such a chronically depressed area of the Soviet economy as agriculture, Lysenko's "theories," now totally discredited even in the USSR, were immune from any criticism from the 1930's through the 1950's by the grace of Stalin's decision. This is perhaps the most blatant of many examples of decision making without any rational or factual basis.

with virtually no ties between its population and the outside world, has not experienced any decision making processes which would have sought an accommodation between conflicting views and which would have been heavily dependent upon a fact finding process. A handful of Soviet bureaucrats who are brought up in this system and who reach the pinnacle of power in Moscow in their sixties is psychologically and emotionally ill-equipped to effectuate a significant change in the system of mechanical behavior of the vast bureaucracy, especially when the price paid by those who have tried traditionally has been high.

Law has occupied a peculiar position in this system. The insistence on the eternal validity of the general utopian dogmas of Marxism (or Marxism-Leninism) has produced a mass of literature in the field of social sciences which is based on dogmas and abstracts from reality. The socio-economic facts are fabricated or perverted. The dogmas that socialism and communism are the ultimate and highest forms of the development of mankind and that nationalization of the means of production eliminates exploitation lead to the axiomatic conclusion that human relations in the socialist society are most humane, just, and devoid of antagonism. Legal rules (and theories) must appear to be humane, "progressive," and palatable to the citizen as well as to the foreign observer.¹² The "single truth" doctrine and policy lead to literal interpretation of the rules. This is a positivist approach to single isolated rules without a positivist system. The application of law, however, is quite another thing. The decisions of administrators and judges on every level abstract from legal rules. The decisions are individualized and, in court cases, often made prior to trials. There is no effort, at least in cases with political ramifications, to perceive a legal rule as a design to regulate identical situations at the moment of the application of a rule. The irreconcilable tension between the interpretation of a rule and its application is "reconciled" by fabrications and perversions of facts.¹³ This is not to say that there are no legal rules to be followed or regulatory schemes to be enforced. The point is that, in matters of importance where the "public relations" considerations are often paramount, the emphasis is not on the process of drafting a legal norm, but on a polit-

¹² The most vivid examples would appear to be civil rights in the Soviet Constitution or rules governing sentencing and the correctional system.

¹³ The system was forced on the conquered states. For a fascinating account of how this system works in every day life, see O. ULC, *THE JUDGE IN A COMMUNIST STATE* (1973).

ical decision of the center of power which is made subsequent to the promulgation of the norm and which may vary in identical cases.

As every student of Soviet law knows, every Soviet legal treatise begins with a chapter on principles permeating the field of law in question. In the case of a domestic law, the principles include the "leading role of the Communist Party" and the "class nature of law." After this obligatory chapter, the chapters which follow contain the positivist interpretation of rules as described above. In the area of application of law, the principles are not used for a functional analysis. As already mentioned, fabrication of facts is the preferred method. The principles are utilized, however, in two ways. First, they are used as a vehicle for analysis of past policies which failed or as a justification for past disregard of law which was so manifest and which became so widely known that the method of fabrication of facts has become untenable and, for such a case, has been rejected by the center of power. Second, these principles figure prominently in the infrequent authoritative statements of the First Secretary or General Secretary of the Communist Party which set a new policy with wide ranging consequences. Such statements usually contain sentences which are literally interpreted as "legal" rules.

There have not been any dramatic excesses of brutality or any dramatic purges within the USSR since Stalin's death in 1953.¹⁴ The regime has somewhat softened its attitude toward its citizens, and Soviet leaders have even argued in favor of a certain decentralization in the economic sphere. There does not appear to be any certainty that the Soviet system would crumble if it allowed, at least to some extent, for the "rule of law" as a substitute for individualized decision making. But, the rule of law as we understand it has never been a goal in the USSR. The regime functions in the same way it has always functioned. The manner of its function is the result of the form of government, one based upon tradition and upon psychological and developmental factors of the Soviet society, rather than the result of some grand design, at least since the consolidation of power in the 1930's. At issue is whether there is any reason for the Soviet State to adopt a different view toward the international decision making process and to behave

¹⁴ The purges in the process of "destalinization" are an exception to this statement. These purges, however, did not adversely affect the general public and met with the popular approval.

differently within the family of nations than it behaves at home. To put it differently: Is there any reason to believe that the Soviet Union would actively participate in the creation of an international order which would reflect an accommodation of conflicting interests, with the recognition that compliance with its rules would be of significant value? There is no question that Soviet diplomacy, from time to time, has proved to be highly successful. There is also no question that the Soviet Union has kept understandings or agreements in some areas of international life, such as the nuclear arms area. However, these instances can be as easily explained in terms of a reaction to sheer necessity as in terms of a recognition of a benefit arising from compliance with rules of the international order. The Soviet Union actively participated in the development of international law in the era of decolonization, but Soviet actions in Afghanistan and Soviet attitudes toward Angola and Cambodia, among others, certainly do not manifest adherence to the principle that "all peoples have the right freely to determine, without external interference, their political status"¹⁶ Taking into account Soviet conquests before and around World War II, the conclusion can hardly be drawn that the Soviet Union sees any value in the family of nations composed of sovereign states. Long term compliance with a particular rule does not suggest Soviet recognition that such rules should be complied with because of their legal character. The Soviet kidnapping of the Czechoslovak government during the invasion of 1968 and its transfer to Moscow, as well as the already mentioned ambivalent attitude toward the taking of American diplomatic hostages in Iran, are cases in point.

The Soviet Union was largely isolated before World War II and during the "cold war" of the late 1940's and the 1950's. The conquests before¹⁶ and during¹⁷ World War II led to the incorporation of the conquered territories into the Soviet Union. The creation of the Socialist community of nations in 1947 and 1948 did not result in any cooperation between the Soviet Union and other socialist states which resembled the process of seeking a consensus within this community. In the beginning, complete Soviet control was maintained through the use of occupation forces and thousands of

¹⁶ Declaration on Friendly Relations, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

¹⁶ An example of these conquests is the territories "released" during the 1917 revolution.

¹⁷ Other examples include the Baltic Republics, parts of the territories of Czechoslovakia, Poland, Romania, Japan, etc.

Soviet secret police advisers. Several international bodies developed within the Socialist community during the 1950's. These were primarily organs of the Warsaw Pact and the Council of Mutual Economic Assistance. There is no evidence, however, that any important decisions of these bodies were preceded by an institutional, orderly decision making process. The TASS statement on the intervention in Czechoslovakia was that "[t]he events in . . . Czechoslovakia were repeatedly the subject of exchanges of views between leaders of fraternal socialist countries . . ."¹⁸ TASS also stated that the invading states acted in accordance with "existing contractual commitments."¹⁹ There were, indeed, "consultations"—the letter of the Warsaw Meeting of Communist Parties,²⁰ the so-called Bratislava communiqué,²¹ and a series of bilateral meetings—but nowhere can any reference be found to an institutional decision making process. The reference to "contractual commitments" is an allusion to the "individual and collective self-defense envisaged in treaties of alliance concluded between the fraternal socialist countries."²² Which treaties these are and which of their provisions were invoked is, of course, not stated.

Until the emergence of Eurocommunism in the 1970's, the Soviet Union's close ties with other communist parties represented a well established area of its international relations, or more properly, the international relations of the Soviet Communist Party. These ties were institutionalized in Comintern, Cominform, and, later, in the Meetings of the Representatives of Communist and Workers Parties. In his *Theory of International Law*,²³ Tunkin concluded that a socialist international law developed "by way of custom, and, partially, by treaty."²⁴ He cites various declarations, pronouncements, communist party programs, agreements, and statements of the mentioned meetings in support of his proposition.²⁵ Yet, it is patently obvious that the meetings of the "Communist

¹⁸ Soviet Embassy Information Department Press Release No. 12 from the TASS News Agency (Aug. 21, 1968) (statement on military intervention), *reprinted in* 7 I.L.M. 1283 (1968).

¹⁹ *Id.*

²⁰ Pravda, July 18, 1968, at 1, *translated and reprinted in* Current Digest of the Soviet Press, Aug. 7, 1968, at 4, *reprinted in* 7 I.L.M. 1265 (1968).

²¹ Pravda, Aug. 4, 1968, at 1, *translated and reprinted in* Current Digest of the Soviet Press, Aug. 21, 1968, at 4, *reprinted in* 7 I.L.M. 1280 (1968).

²² Soviet Embassy Information Department Press Release No. 12, *supra* note 18.

²³ G. TUNKIN, *THEORY OF INTERNATIONAL LAW* (1974).

²⁴ *Id.* at 432.

²⁵ *Id.* at 427-47.

and Workers Parties" had served only one purpose: to unconditionally support the Soviet Union. When this purpose was no longer being served, *i.e.* with the emergence of Eurocommunism following the Soviet invasion of Czechoslovakia, the Soviet Union was faced with the need of working toward accommodation and compromise within the Communist movement, but instead resorted to condemnations. The current split with the Italian Communist Party is a case in point. Tunkin, justifying the right of the Soviet Union to intervene in socialist countries, is quick to point out the "special" role the Soviet Union has in safeguarding the survival of Soviet style regimes.²⁶ The Soviet Union has viewed the socialist countries and communist parties elsewhere as entities which are totally subordinate to Moscow. Consequently, the international communist movement and the socialist community have not provided a reason for Moscow to behave any differently on the international scene than they do at home. Quite to the contrary, the socialist countries serve as proof of the proverbial pudding: whenever a country has resorted to insubordination it has been successfully "eaten." As for the communist movement, the party outside the socialist world which dares defy the orthodoxy is simply discarded by Moscow.

Prior to the invasion of Czechoslovakia, Soviet interpretation of international law followed the conflict of positivist interpretation of rules²⁷ and fabrication or perversion of facts at the moment of application of the rules. As Butler points out in his Introduction to Tunkin's *Theory of International Law*, Tunkin himself had advocated the concept of single international law.²⁸ Authors from other socialist countries have taken an identical position. One such author specifically addressed the question of collective security and argued that any such system had to be necessarily universal.²⁹ While Nicholas Rostow is correct in seeing elements of the Brezhnev doctrine in the Soviet justification of the invasion of Hungary in 1956,³⁰ and while Tunkin, as perhaps the authoritative source, concurs in an *ex post facto* opinion,³¹ the legal justification

²⁶ *Id.* at 435, 440.

²⁷ In the area of intervention see, e.g., Butler, *Soviet Attitudes Toward Intervention*, *supra* note 1.

²⁸ Butler, *Introduction to G. TUNKIN*, *supra* note 1, at xix.

²⁹ Outrata, *Mezinárodnepřávní Ochrana Bezpečnosti Státu*, 1 *STUDIE Z MEZINÁRODNÍHO PRÁVA* 23, 43 (1955).

³⁰ Rostow, *supra* note 1, at 224-25.

³¹ G. TUNKIN, *supra* note 23, at 435.

at the time of the invasion rested on the old international law doctrine of invitation as a permissible justification for intervention.

The Brezhnev doctrine, as announced in connection with the invasion of Czechoslovakia³² and reiterated in connection with the still current Polish situation,³³ is important to the extent that it provides a foundation for the assertion of the existence of a new, socialist international law³⁴ representing a higher form of international law governing the societies in the highest stage of the development of mankind.³⁵ The basis of Tunkin's advocacy of this new socialist international law is quite simple. The slogan of the 1848 Communist Manifesto, "proletarians of all countries unite," became the basis of relations within the entire communist movement and thus became the principle of proletarian internationalism.³⁶ The concomitant legal principle of socialist internationalism includes the principle of comradely mutual assistance which "includes the right of each state of the world system of socialism to obtain assistance from other socialist countries and, at the same time, the obligation of each socialist state to render assistance to other socialist countries."³⁷ Tunkin undoubtedly implies the obligation to render assistance does not depend upon a request. Since, as mentioned above, the socialist international law represents a "higher form" of international law, it is more progressive and the law of the United Nations Charter is irrelevant. The law of the

³² See, e.g., Soviet Embassy Information Department Press Release No. 12, *supra* note 18. "The fraternal countries firmly and resolutely counterpose their unbreakable solidarity to any threat from the outside. Nobody will ever be allowed to wrest a single link from the community of socialist states." See also Letter from the Permanent Representative of the USSR to President of the Security Council, 23 U.N. SCOR Supp. (July-Sept.) at 136, U.N. Doc. S/8759 (1968), reprinted in 7 I.L.M. 1288, 1289 (1968). "The events in Czechoslovakia are a matter that concerns the Czechoslovak people and the States of the Socialist Community which are bound by appropriate mutual obligations."

³³ See U.S. Dept. of State, Chronicle of Public Soviet and Soviet-Proxy Involvement in the Polish Crisis, July 1980-Nov. 1981 (Dec. 1981) (unpublished press release); see also *id.* Appendix, at 1 (Brezhnev's speech to the Congress of the Communist Party of the Soviet Union, translated from the February 24, 1981 edition of Pravda).

³⁴ See G. TUNKIN, *supra* note 23, at 427-47.

³⁵ As to the existence of the new international law, see *supra* note 24 and accompanying text. The concept was embraced by other socialist authors. See, e.g., M. POROCNÝ, MEZINÁRODNÍ PRÁVO VEREJNÉ 32-43 (1972) (a Czechoslovak textbook on international law). Interestingly, the author writes: "Examples given in accordance with the principle of international assistance include . . . the collective assistance of the Soviet Union, Poland, German Democratic Republic, Hungary, and Bulgaria to the Czechoslovak people in 1968. . . ." *Id.* at 41 (translation from the Czech original by the author).

³⁶ G. TUNKIN, *supra* note 23, at 4.

³⁷ *Id.* at 435.

Charter applies only between non-communist states and between the communist states and other states as the law governed by the principles of "peaceful coexistence."³⁸ What we have, then, is a new subject in the international community, *the socialist community*, which comes within the literally interpreted protection of article 2(7) of the Charter of the United Nations.³⁹ With the period of decolonialization virtually over and with Moscow reserving the right to determine membership in the socialist community, there is a new justification for future Soviet interventions and aggressions. As Rostow points out, Afghanistan is an example.⁴⁰

One interesting aspect of Tunkin's work may foreshadow future Soviet advocacy in international law. Tunkin's *Theory of International Law* is replete with references to "principles." The "Friendly Relations" resolution,⁴¹ which, as mentioned above, was the result of the Soviet-Czechoslovak peaceful coexistence initiative, is likewise structured on "principles." Tunkin refers to the fundamental principles of international law and their modification during the period of "Coexistence."⁴² With respect to these fundamental principles, Tunkin refers to several socialist authors.⁴³ Interestingly, several socialist international lawyers, particularly the late V. Outrata whose work is the first one cited by Tunkin,⁴⁴ accepted, albeit with modifications, the system (as opposed to the individual principles) of the fundamental principles of international law suggested by a prominent British jurist, Georg Schwarzenberger.⁴⁵ The fundamental principles which

³⁸ *Id.* at 34-86.

³⁹ Compare U.N. CHARTER art. 2, para. 7 with Letter from the Permanent Representative of the USSR to President of the Security Council, *supra* note 32.

⁴⁰ Rostow, *supra* note 1, at 236-38.

⁴¹ Declaration on Friendly Relations, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

⁴² G. TUNKIN, *supra* note 23, at 49-87.

⁴³ *Id.*

⁴⁴ *Id.* at 49, note 1.

⁴⁵ Schwarzenberger, *The Fundamental Principles of International Law*, 1 RECUEIL DES COURS 195 (1955); G. SCHWARZENBERGER, *THE INDUCTIVE APPROACH TO INTERNATIONAL LAW* 72-107 (1965); G. SCHWARZENBERGER & E. BROWN, *A MANUAL OF INTERNATIONAL LAW* 33-36 (1976). The seven fundamental principles are: sovereignty, recognition, consent, good faith, freedom of the seas, international responsibility, and self-defense. The MANUAL distinguishes principles and fundamental principles which are not binding from rules which are binding. G. SCHWARZENBERGER & E. BROWN, *supra*, at 34. The tests applied in their selection are: "(1) They must be exceptionally significant for international law; (2) They must stand from others by covering a relatively wide range of issues and fall without artificiality under one and the same heading; (3) They must either form an essential part of any known system of international law or be so characteristic of existing international law that if they were

Schwarzenberger uses in his system of international law are abstractions from the multitude of rules governing a particular subject.⁴⁶ He is careful to point out that the fundamental principles are not binding per se, and that the focus of the search must be to identify binding rules. Outrata specifically accepts this restrictive concept.⁴⁷ It should be pointed out that both Schwarzenberger and Outrata differentiate between principles or general principles and fundamental principles. The difference is in the degree of abstraction. Tunkin proceeds quite differently in dealing with his principles. He de-emphasizes individual rules, mixes some rules with political statements and conclusions, reaches a "principle," and applies it as a super-rule to the exclusion of the existing rules. His method appears to be one of generalization and abstraction. However, it is nothing more than the posing of political postulates. The process is reversed. The validity of a rule is measured by its compatibility with the super-rule.

Soviet aggressions, armed interventions, and other types of naked coercion (e.g., Poland) have been characterized by two elements: refusal to cooperate with international organizations and fabrication of facts. In general, the Soviet Union in its legal advocacy has resorted either to espousing existing legal theories as they might have fit the fabricated facts (e.g., self determination, invitation, or self-defense), or to groundless abstractions based on the authoritative political pronouncements of Soviet leadership. The author's thesis is that Soviet participation in the international law making process in the area of intervention and aggression has been characterized by the same attitude that characterizes Soviet domestic legislation: law making is an exercise in public relations.

Admittedly, recent Soviet armed involvement, direct or by proxy, has been limited to either socialist states or to states with a significant Marxist faction able to either form a government (e.g., Ethiopia) or to appear to be able to govern (e.g., Afghanistan and Angola). Other Soviet efforts to establish client states have included the widely accepted practice of supplying arms to *bona fide* revolutionary movements, as in Nicaragua. Among the attempts at

ignored there would be a danger of losing sight of a characteristic feature of contemporary international law." *Id.* at 35.

⁴⁶ Schwarzenberger, *supra* note 45, at 195, 201, 203.

⁴⁷ Outrata, *K Pojmu Obecných a Základních Zásad Mezinárodního Práva*, 5 CZECHOSLOVAK J. OF INT'L L., 177 (1961). His fundamental principles are: sovereignty, good faith, protection of the peace, obligatory co-operation of states in economic, social, and cultural matters, and legal regulation of armed conflict. *Id.* at 186-88.

establishing client states which have been successfully resisted are Somalia and Syria. These efforts sometimes contain comical aspects (e.g., "switching" between Iraq and Iran).

Soviet general attitudes are determinative of Soviet behavior in particular cases. Therefore, it might be useful to look at Soviet attitudes toward one international crisis involving the use of force which was not only outside of the Soviet sphere of interest, but which seemed to be devoid of ideological implications for the Soviet Union. The Falklands crisis is an example of Soviet indifference to legal solutions and international cooperation even though the support for law would not have entailed any discernible political risks.

The grain embargo imposed by President Carter on the Soviet Union⁴⁸ brought about increased Soviet purchases of agricultural products from Argentina and, consequently, certain rapprochement between the USSR and Argentina. Yet, there had been no evidence of any political cooperation between the Argentinian military junta and the Soviet Union which would have signified that Argentina figured into Soviet global strategy in any way, or more specifically, into Soviet attempts to influence events in Latin America. In fact, prior to the Falklands crisis there had been a significant improvement in United States-Argentina relations brought about by a change in United States policy toward military regimes accused of human rights violations. Furthermore, the decision of the beribboned generals to invade the Falklands was arguably influenced by domestic difficulties in Argentina. If this were true, a successful annexation of the Falklands could have led to the stabilization of the political situation in Argentina. Such a goal would not be consistent with the Soviet's Latin American strategy. On the other hand, 1982 was to be the year of cooperation between the Soviet Union and Western Europe on the natural gas pipeline which was widely opposed in the United States.⁴⁹ The ultimate fate of the project was by no means certain in April 1982. It could at least be theorized that Moscow was strongly interested in the pipeline and was not particularly anxious to do anything which

⁴⁸ Imposed in January 1980. Restriction on the Export of Agricultural Commodities and Products to the USSR, 45 Fed. Reg. 1883 (1980) (to be codified at 15 C.F.R. §§ 376, 386, 399). The embargo was removed by President Reagan in April 1981.

⁴⁹ The proposition that the pipeline would lead to West European dependency on the USSR cannot be viewed as emanating from the Reagan administration alone. See, e.g., Washington Post, Dec. 2, 1980, § D, at 6, col. 5.

might have caused a deterioration of its relations with Western Europe.

Apart from Argentina's claims which were supported only by a few states like Panama, the Falklands situation was manifestly devoid of the usual decolonization issues. The historical links between Argentina and the Falklands were almost nonexistent, at least when abstracted from the succession into Spanish claims. There was no national identity of population, no "liberation movement," and no sufficient territorial link. Most importantly, there was no militant Latin American sentiment in favor of Argentina because of a number of territorial disputes with her neighbors, and there was no unanimity within the developing countries on the matter.⁵⁰ The Soviet delegate in the Security Council "accused Britain of stubbornly opposing decolonization"⁵¹ and abstained in the vote on Security Council Resolution 502 of April 3, 1982, which demanded cessation of hostilities and Argentinian withdrawal, and which called on both parties to seek a diplomatic solution.⁵² As the crisis progressed, the Soviet Union sided with Argentina.

Whether the unanimity of the Permanent Members of the Security Council backed by strong sanctions under chapter VII of the Charter would have averted the war is a matter of pure speculation. But, where else should cooperation be achieved and the law upheld than in a case of a textbook aggression in which there appear to be no strong political reasons for supporting the aggressor? The question may be posed whether it is desirable that the collective security system of the Charter should work. Whatever the answer may be, in a year marked by war in the South Atlantic, a massive bombing of Beirut, the Iran-Iraq war, the Cuban backed border war between Ethiopia and Somalia, and continued Soviet military action in Afghanistan, there is an urgent need to establish some consensus, some "rules of the game," and to create a climate of pressure to follow such rules.⁵³ In the Falklands crisis the Soviet Union could have cooperated with other members of the international community on the basis of a treaty it negotiated, the United Nations Charter, and the rules of a number of General Assembly

⁵⁰ N.Y. Times, Apr. 4, 1982, at 1, col. 4.

⁵¹ *Id.*

⁵² S.C. Res. 502, U.N. SCOR Supp. — (—) at —, U.N. Doc. No. S/— (1982), *reprinted in* 21 I.L.M. 629 (1982).

⁵³ *Cf.* N.Y. Times, Sept. 8, 1982, at 1, col. 4.

resolutions which it helped to draft. Moscow did not veto the April 3, 1982 Security Council Resolution, but once again manifested a strong indifference to law, the law making process, and international cooperation in political matters.

There is no doubt that the Soviet attitude will not change overnight. Those who believe that the Soviet Union and its empire will somehow crumble from within because of economic and civil rights pressures are not only ignorant of the Soviet system of governing, but are also disregarding the cold war experience. An isolation more severe than the present one was not effective then, and switching between individual embargoes will not work now. The population of the empire has gone through worse times and has psychologically accepted the fact that defiance ends in tragedy and a reversal of economic and civil rights gains.⁵⁴ In order to influence Soviet behavior, it will be necessary to establish or re-establish "rules of the game"—an international order—and to "teach" Moscow to participate. The Soviet Union can be taught through pressure from sources other than the West and through a genuine and long term cooperation with the West which would withstand occasional frictions, even of a severe nature. It may take a few more Afghanistan-type invasions to prompt the developing countries to generate a concerted pressure on Moscow. To generate such a pressure will also require an acceptable behavior by states closely linked to the West, and especially to the United States. That the United States and the Soviet Union could strive for cooperation was demonstrated by Kennedy-Khrushchev personal diplomacy and the Nixon-Kissinger attempt to establish a framework for cooperation. When the natural gas pipeline has been built, the United States will finally learn that embargoes lead nowhere; neither do actions such as the Jackson-Vanik amendment.⁵⁵

There is one area in which United States-Soviet Union cooperation in particular, and international cooperation in general, may prove to be not only imperative, but also a good beginning for efforts to draw Moscow into the habit of approaching seriously the establishment of an international consensus and the adherence to agreed upon rules. It has been feared that such states as Libya may obtain nuclear weapons. It should be clear by now that nuclear weapons might pose an unacceptable danger in the hands of

⁵⁴ Cf. Kamm, *The Graying of Prague*, N.Y. Times, Aug. 29, 1982, § 6 (Magazine), at 48, col. 1.

⁵⁵ Trade Act of 1974, § 402, 19 U.S.C. § 2432 (1976).

Argentinian generals and others. The Permanent Members of the Security Council must reach an agreement on how to deal with the problem of the nuclear capability of states which have not yet publicly acknowledged possession of these weapons. The future of the world may well depend on the willingness of the United States and the Soviet Union not to distinguish between friends and adversaries and not to yield to the political pressures of the moment in dealing with this problem.

